

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KINDELL SELLERS

Claimant

APPEAL NO. 21A-UI-07405-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANCHISE MANAGEMENT INVESTORS

Employer

OC: 05/24/20

Claimant: Appellant (1R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 8, 2021, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 21, 2021. Claimant participated personally. Employer participated by Sarah Olsen and Joe Retchfrig.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant previously worked for Franchise Management Investors, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant worked as a restaurant cook in the Clear Lake KFC /Taco Bell store.

Claimant worked 30-40 hours a week. Although claimant testified his hours were reduced, employer's documentation indicated that throughout employer's ownership of the franchise where claimant worked, claimant continued to have the same hours available.

Claimant decided in July and August that he would not be working, although employer stated hours were still available for claimant to work. Claimant stated it wasn't worth taking a cab to get to work when he was scheduled few hours. Employer disputed the hours claimant could have worked.

Employer shut its business where claimant worked on December 13, 2020. Claimant did not show for the meeting set for that day, so he did not receive the note stating the business was

closing and a job was offered at a KFC in Mason City. Employer stated that this letter was sent to claimant but was not sure to what address and was not sure that claimant received the document.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed for the time period between May 24, 2020 and December 13, 2020.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant is not considered partially unemployed as claimant continued to be offered the same hours he'd been working throughout the time employer kept the business open. Benefits are denied.

This matter will be remanded to the fact finder for determination of the separation issue which occurred on or around December 13, 2020.

DECISION:

The March 8, 2021, reference 02, decision is affirmed. The claimant is not partially unemployed and benefits are denied.

This matter will be remanded to the fact finder for determination of the separation issue that occurred on or around September 13, 2020.



Blair A. Bennett
Administrative Law Judge

May 28, 2021
Decision Dated and Mailed

bab/ol