

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABBY A GRELL
Claimant

FAREWAY STORES INC
Employer

APPEAL 20A-UI-05003-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

Employer filed an appeal from the May 28, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2020, at 3:00 p.m. Claimant did not participate. Employer participated through Theresa McLaughlin, Vice President of Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a part-time grocery clerk with Fareway Stores on February 24, 2020. Claimant works an average of 15 hours per week. Claimant is not guaranteed hours. Claimant filed a claim for unemployment insurance benefits effective April 4, 2020. On May 11, 2020, claimant requested a leave of absence from work to travel. Employer granted claimant's request. Claimant worked her regular hours from April 4, 2020 until May 11, 2020. Claimant has not performed any work for employer since May 11, 2020. Employer had claimant's regular work hours available for claimant if she had not taken a leave of absence. Claimant's hourly wage is \$10.00. Claimant's weekly benefit amount is \$95.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not totally or partially unemployed from April 5, 2020 until May 11, 2020 and claimant has been totally unemployed and not available for work since May 11, 2020. Benefits are denied.

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.

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 Admin. Code r. 871-24.23(10), (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Claimant performed work for employer from April 5, 2020 until May 11, 2020. Claimant worked her regular hours and earned more than \$110.00 per week. Therefore, claimant was not totally or partially unemployed. Claimant performed no work and earned no wages after May 11, 2020. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant was on a voluntary leave of absence effective May 11, 2020. Employer had claimant's regular hours available for her if she had not taken a leave of absence. Claimant is not available for work effective May 11, 2020. Benefits are denied. Employer's account is not subject to charge.

DECISION:

The May 28, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was not unemployed from April 5, 2020 until May 11, 2020. Claimant has been totally unemployed and not available for work since May 11, 2020. Benefits are denied. Employer's account (account number 006745-000) is not subject to charge.



Adrienne C. Williamson
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July 9, 2020
Decision Dated and Mailed

acw/mh