

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CATHERINE R KOPP
Claimant

NORDSTROM INC
Employer

APPEAL NO. 22A-UI-16396-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/10/22
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

On August 22, 2022, Catherine Kopp (claimant) filed a timely appeal from the August 11, 2022 (reference 01) decision that denied benefits effective July 10, 2022, based on the deputy's conclusion the claimant was still employed under the same hours and wages as in the original contract of hire and could not be considered partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 19, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-16397-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the period of July 10, 2022 through August 6, 2022.

Whether the claimant was partially and/or temporarily unemployed during the period of July 10, 2022 through August 6, 2022.

Whether the employer's account may be charged for benefits for the period of July 10, 2022 through August 6, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
Catherine Kopp (claimant) is employed by Nordstrom, Inc. as a part-time Processor at the employer's distribution center. The claimant has been with the employer since 1992. Until March 2022, the employment was full-time. Effective March 2022, the claimant elected to transition to part-time employment. While the claimant was full-time, she worked four ten-hour shifts per week, Tuesday through Friday. Once the claimant went part-time, she regularly worked four eight-hour shifts per week, 32 hours per week, Tuesday through Friday. The claimant's hourly wage has at all relevant times been \$20.50 an hour.

The claimant established an original claim for benefits that was effective July 10, 2022. Nordstrom, Inc. is the sole base period employer. The base period consists of the second, third and fourth quarters of 2021 and the first quarter of 2022. The claimant's base period wages derived from full-time employment until the last month of the base period, March 2022, when the claimant transitioned to part-time employment.

The claimant made weekly claims for the four weeks that ended July 16, July 23, July 30, and August 6, 2022. The claimant discontinued her claim for benefits following the benefit week that ended August 6, 2022. The claimant reported wages and/or vacation pay and received unemployment insurance benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages/Vacation Pay Reported</u>	<u>Benefits Paid</u>
7/16/22	0.00	551.00
7/23/22	190.25	360.00
7/30/22	656.00	0.00
8/6/22	354.25	196.00

The claimant established her July 10, 2022 original claim in response to a temporary layoff. The layoff was in effect from, Monday, July 11, 2022 through Wednesday, July 20, 2022.

During the week that ended July 16, 2022, the claimant was ready, willing and able to work, but the employer had no work for her. The claimant earned no wages during that week.

During the week that ended July 23, 2022, the claimant was ready, willing and able to work for the majority of the week. The employer had no work for the claimant on Tuesday and Wednesday, but had work for the claimant on Thursday and Friday. The claimant worked eight hours on Thursday, July 21, 2022 and took Friday, July 22, 2022 off as a paid vacation day. The claimant's earned wages (\$164.00) plus vacation pay (\$164.00) totaled \$328.00.

The claimant took the week of July 24 through July 30, 2022 off a paid vacation. The claimant was not available for work with the employer that week. The claimant earned no wages, but received \$656.00 in vacation pay for the week.

During the week of July 31 through August 6, 2022, the claimant was ready, willing and able to work for the majority of the week. The claimant took Tuesday, August 2, off as paid vacation. The claimant then worked her regular shift on Wednesday, August 3 and Thursday, August 4. On Friday, August 5, 2022, the claimant was available to work, but the distribution center was closed for a system upgrade and the employer had no work for the claimant. The claimant's earned wages (\$328.00) plus vacation pay (\$164.00) totaled \$492.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

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

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(26), (29) and (41) provides:

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

(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Code section 96.1A(37) 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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

During the week that ended July 16, 2022, the claimant was able to work, available for work, but temporarily laid off. The claimant was eligible for the \$551.00 in unemployment insurance benefits she received for that week, provided she was otherwise eligible.

During the week that ended July 23, 2022, the claimant was able to work and available for work for the majority of the week, but the employer did not have the claimant's usually number of work days and usual number of weekly hours available. The claimant was partially unemployed during that week. The amount of earned wages that exceeded \$137.00 (one-fourth of the \$551.00 weekly benefit amount, rounded to the lowest whole dollar) were deductible from the claimant's unemployment insurance benefits. See Iowa Admin. Code rule 871-24.18. Thus, \$27.00 (\$164.00 - \$137.00) in earned wages were deductible, whereas the entire vacation amount (\$164.00) was deductible. See Iowa Code section 96.5(7) regarding deductibility of vacation pay. Accordingly, the claimant was eligible for \$360.00 in benefits for the week ending July 23, 2022, provided she was otherwise eligible. This was the amount of benefits IWD paid to the claimant for the week that ended July 23, 2022.

During the week that that ended July 30, 2022, the employer had the claimant's regular hours available for the claimant, but the claimant was not available for work due to her decision to take the week off as vacation. In addition, the claimant's vacation pay was deductible from benefits and equaled or exceeded the weekly unemployment insurance benefit amount. The claimant is not eligible for unemployment insurance benefits for the week that ended July 30, 2022 and did not receive benefits for that week.

During the week of July 31 through August 6, 2022, the claimant was ready, willing and able to work for the majority of the week, but the employer did not have the claimant's usually number of work days and usual number of weekly hours available. The claimant was partially unemployed during that week. The amount of earned wages that exceeded \$137.00 (one-fourth of the \$551.00 weekly benefit amount, rounded to the lowest whole dollar) were deductible from the claimant's unemployment insurance benefits. See Iowa Admin. Code rule 871-24.18. Thus, \$191.00 (\$328.00 - \$137.00) of the earned wages were deductible, whereas the entire vacation amount (\$164.00) was deductible. See Iowa Code section 96.5(7) regarding deductibility of

vacation pay. Accordingly, the claimant was eligible for \$196.00 in benefits for the week ending August 6, 2022, provided she was otherwise eligible. This was the amount of benefits IWD paid to the claimant for the week that ended August 6, 2022.

The employer's account may be charged for benefits for the weeks that ended July 16, July 23, and August 6, 2022.

DECISION:

The August 11, 2022 (reference 01) decision is MODIFIED in favor of the claimant/appellant as follows. During the week that ended July 16, 2022, the claimant was able to work, available for work, but temporarily unemployed. During the weeks that ended July 23, 2022 and August 6, 2022, the claimant was able to work, available for work, but partially unemployed. The claimant was eligible for the benefits she received for the weeks that ended July 16, July 23, and August 6, 2022, provided she met all other eligibility requirements. The employer's account may be charged for benefits for those three weeks. During the week that ended July 30, 2022, the claimant was not available for work and not eligible for unemployment insurance benefits.



James E. Timberland
Administrative Law Judge

October 7, 2022
Decision Dated and Mailed

jet/ar

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.