

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

CATHY L KNUDTSON-STANFIELD
Claimant

JL SUBS INC
Employer

APPEAL NO. 22O-UI-15324-B2T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (1)

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
871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

The original claim in this matter was filed on March 22, 2020. Claimant was found eligible to receive unemployment benefits through a reference 02 decision on September 2, 2021. This decision was appealed by employer, and a hearing was held on employer's appeal. Claimant did not show for the hearing, and the fact finder's decision was overturned on November 19, 2021 in case 21A-UI-20043-JC-T.

This decision was appealed by the claimant to the Employment Appeals Board. The Board initially affirmed the ALJ's decision, adopting the judge's Finding's of Fact and Reasoning and Conclusions of Law. Later, after the claimant requested a rehearing, the Board remanded the matter back to the appeals bureau for further action as the claimant stated she did not receive notice and therefore had not appeared for the previous hearing. On May 16, 2022 another appeals hearing was held. Neither claimant nor employer appeared for the hearing. The administrative law judge upheld the earlier decision denying benefits in 22B-UI-08137.DG-T.

This decision was also appealed to the Employment Appeals Board. Again, the Board remanded the matter back to the appeals bureau as the claimant stated that she timely requested that the hearing be continued as she could not appear, and this request was not addressed. A new hearing was set in front of this judge.

On August 25, 2022, a hearing was held in front of Administrative Law Judge Blair Bennett. Claimant appeared for said hearing, and employer did not appear. Claimant was the appellant in this matter. Judge Bennett did not hold the hearing in this matter, even though the claimant was present for the hearing. Judge Bennett erroneously dismissed the appeal in this case, mistakenly believing that the employer filed the appeal, when in fact claimant had appealed the earlier reversal. Judge Bennett then reset this hearing as the previous decision was created in error.

After due notice, a hearing was scheduled for and held on November 30, 2022. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

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 administrative law judge takes notice of the previous Findings of Fact entered in this case and the previous decisions entered. Those Findings are augmented by the testimony of claimant - who was not present for the hearing upon which 21A-UI-20043-JC-T was based.

The claimant worked for JL Subs, a base period employer, as a part time assistant manager at the Elkader Iowa Subway store at the time of her filing for unemployment benefits. Claimant had been a part time assistant manager since 2013. Claimant also has other minimal part wages from News America Marketing in her base period history. Claimant stated that she historically worked a minimum of 25 hours a week as a part time assistant manager and had an agreement to do the same. Employer stated that claimant worked at or around 25 hours a week. A look through claimant's monetary record indicates that in the year prior to the quarters when claimant received unemployment benefits, she had wages varying from approximately \$4,200.00 a quarter to approximately \$5,400.00 a quarter, as claimant was earning \$11.00 an hour. This averages out to between 382 hours a quarter worked and 490 hours a quarter worked. As there are 13 weeks in a quarter, the weekly hours worked for the claimant were between 29 hours a week and nearly 38 hours a week. While claimant received unemployment benefits, she never worked more than 325 hours for the 13 weeks compromising a quarter or 25 hours a week on average.

Employer stated that claimant was able to set her own hours worked and claimant stated that the manager and not claimant as an assistant manager set her own schedule. Claimant stated that the manager needed to keep multiple workers happy with hours, and the store was open a reduced number of hours, so claimant and many other employees all received reduced hours. In any event, the claimant did not work a minimum of 25 hours in every week when she filed for unemployment benefits, although for majority of weeks when she filed, she did work at least 20 hours per week. Claimant stated that at the start of the pandemic, her salary was increased, but the administrative law judge did not find out the hourly rate. Irrespective of the rate, any rate above the \$11.00 an hour rate claimant was receiving prior to the raise indicates claimant worked even fewer than the 25 minimum hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period of time she filed for unemployment benefits.

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.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-24.23(26) 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.

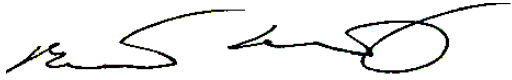
Iowa Admin. Code r. 871-24.22(2)i(1) provides:

Benefit 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.

Because the claimant had a consistent history of working as a part time assistant manager for employer for nearly a decade prior to the pandemic, such part time, 25 hours per week hours are seen to have been guaranteed by the employer. Throughout all times relevant, claimant remained able and available to work at least these 25 hours of work, but the employer denied claimant the hours she'd become accustomed to working. As such, claimant is considered partially unemployed. As the claimant consistently earned less than her weekly benefit amount plus \$15.00, she is eligible to receive benefits for those weeks when she did not have sufficient wages. Benefits are allowed.

DECISION:

The September 2, 2021 (reference 02) decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

December 5, 2022
Decision Dated and Mailed

bab/scn

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.