

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CIARA A HENKHAUS**  
Claimant

**APPEAL NO. 21A-UI-06330-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TAILGATERS**  
Employer

**OC: 03/22/20**  
**Claimant: Respondent (2R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 15, 2021, reference 01, decision that allowed benefits effective January 10, 2021, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that that the claimant was able to work and available for work, but on a short-term layoff. After due notice was issued, a hearing was held on June 15, 2021. Claimant, Ciara Henkhaus, participated. Shari Mitchell represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning January 10, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning January 10, 2021.

Whether the employer's account may be charged for benefits for the period beginning January 10, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an additional claim for benefits that was effective January 10, 2021. The additional claim was based on a March 22, 2020 original claim. In connection with the original claim, Iowa Workforce Development set the weekly benefit amount for regular benefits at \$182.00. The base period for the original claim consisted of the fourth quarter of 2018 through the third quarter of 2019.

After the claimant established the additional claim that was effective January 10, 2021, the claimant made weekly claims for each of the 10 weeks between January 10, 2021 and the March 20, 2020 end of the benefit year. The claimant earned wages during the four weeks

between January 10 and February 6, 2021, but did not report those wages when making her weekly claims. The claimant did not conduct an earnest search for additional work during the period of January 10 through the March 20, 2021 end of the benefit year. Instead, the claimant completed online applications through indeed.com with no intention of accepting an offer of employment.

On October 16, 2020, the claimant began employment with OtisMitch, L.L.C, doing business as Tailgaters. The employer is a bar and restaurant in Coralville. Tailgaters is not a base period employer for purposes of the claim year that began for the claimant on March 22, 2020 and that ended on March 20, 2021. The claimed worked for the employer as a part-time cook. The claimant limited her days of availability to Monday through Friday. In addition, the claimant needed to leave work in time to collect her child from daycare before 6:00 p.m. Heather Henderson, General Manager, was the claimant's supervisor. The claimant's wage was \$12.00 an hour. There was no guarantee of a particular number of work hours in the part-time employment. The claimant's work hours demonstrate variability in the claimant's availability to perform work for the employer and the work hours the employer had for the claimant.

The claimant's work hours and weekly wages at the start of the employment were as follows:

<u>Benefit week end date</u>	<u>Number of shifts</u>	<u>Hours Worked</u>	<u>Wages</u>
10/24/20	4	18.9	226.80
10/30/20	4	25.6	307.20
11/07/20	0	0	0.00
11/14/20	3	16.6	199.20
11/21/20	1	4.1	49.20

During the week that ended November 7, the claimant did not work any hours for the employer because she was quarantining in connection with a COVID-19 exposure. The earned weekly wages were zero.

During the week that ended November 21, the claimant worked only 4.1 hours on Monday, November 16.

The claimant was thereafter unavailable for work until Wednesday, January 1, 2021. Upon her return to the employment, the claimant's hours and wages were as follows:

<u>Benefit week end date</u>	<u>Number of shifts</u>	<u>Hours Worked</u>	<u>Wages</u>
1/2/21	1	5.7	68.40
1/9/21	3	18.6	223.20
1/16/21	1	6.5	78.00

During the week that ended January 16, the claimant only worked on Monday, January 11, 2021.

The claimant was then unavailable for work until Thursday, January 21. Her hours and wages were then as follows:

<u>Benefit week end date</u>	<u>Number of shifts</u>	<u>Hours Worked</u>	<u>Wages</u>
1/23/21	2	13.5	162.00
1/30/21	3	18.0	216.00
2/06/21	3	19.4	232.80

After the claimant worked on February 5, 2021, she was not again available for work with the employer until June 2021.

On or about February 9, 2021, the claimant was the victim of a domestic abuse assault and suffered serious injury to her knee. The claimant's knee injury required surgery.

The claimant separated from the employment in anticipation of her surgery.

Due to the injury the February 22, 2020 surgery and the eight to 10-week anticipated recovery period, the claimant was unable to work from February 9, 2021 until at least April 19, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

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. 871-24.22(1)(a) and (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. ....

...

(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(16) and (26) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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 96.1A(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 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant is not eligible for benefits for the period of January 10, 2021 through the March 20, 2021 benefit year end date. At no time between January 10, 2021 and March 20, 2021 was the claimant laid off from or partially unemployed from Tailgaters. The employer scheduled the claimant to work in the part-time employment according to the claimant's availability to work,

which varied substantially from week to week. There was no guarantee of work hours and no expectation of a particular number of work hours. During the weeks that ended January 30 and February 6, 2021, the claimant's weekly wages exceeded her weekly benefit amount by more than \$15.00, which provides another basis for the conclusion that the claimant was not partially unemployed during those weeks.

The claimant was not available for work within the meaning of the law during the period of January 10, 2021 through the March 20, 2021 benefit year end date. Prior to February 9, 2021, any reduction in the claimant's weekly work hours was attributable to restrictions the claimant placed on her availability for work. From February 9, 2021 through the March 20, 2021 benefit year end date, the claimant was unable to work due to injury.

Tailgaters is not a base period employer for purposes of the March 22, 2020 through March 20, 2021 benefit year. Tailgaters has not been charged for benefits in connection with the March 22, 2020 benefit year and will not be charged for benefits for that benefit year.

This matter will be remanded to the Benefits Bureau for entry of overpayment decisions regarding the state and federal benefits the claimant received for the period of January 10, 2021 through March 20, 2021.

**DECISION:**

The February 15, 2021, reference 01, decision is reversed. The claimant was not available for work within the meaning of the law during the period of January 10, 2021 through March 20, 2021. The claimant was not temporarily or partially unemployed during the period of January 10, 2021 through March 20, 2021. The claimant is not eligible for benefits for the period of January 10, 2021 through March 20, 2021. The employer is not a base period employer. The employer's account will not be charged for benefits for the period of January 10, 2021 through March 20, 2021.

This matter is **remanded** to the Benefits Bureau for entry of overpayment decisions regarding the state and federal benefits the claimant received for the period of January 10, 2021 through March 20, 2021.



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James E. Timberland  
Administrative Law Judge

September 24, 2021  
Decision Dated and Mailed

jet/scn