

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHANIE L CONTRERAS**

Claimant

**APPEAL 21A-UI-10601-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 02/07/21**

**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

**STATEMENT OF THE CASE:**

On April 16, 2021, the claimant, Stephanie L. Contreras, filed an appeal from the April 13, 2021 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in her contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Thursday, July 1, 2021. Appeals 21A-UI-10600-LJ-T and 21A-UI-10601-LJ-T were heard together. The claimant, Stephanie L. Contreras, participated. The employer, Casey's Marketing Company, did not register a witness or representative and did not participate in the hearing. Claimant's Exhibits A and B were received and admitted into the record. The administrative law judge took official notice of claimant's unemployment insurance benefits records.

**ISSUE:**

Was the claimant totally, partially, or temporarily unemployed effective February 7, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an assistant manager, from August 2020 until February 11, 2021.

Claimant worked at the employer's store in Riverside, Iowa. In January 2021, the employer reduced employees' hours company-wide. Claimant went from working full-time hours to working a reduced schedule. (Claimant's Exhibit B)

During early February 2021, the Riverside location was undergoing major construction and remodeling. Claimant provided photographs showing the extent of the construction and documenting the dust, mold, and debris caused or revealed by the construction. (Claimant's Exhibit B) This dust, mold, and debris aggravated claimant's respiratory system and made her ill.

During the week of February 7, claimant spoke to the employer about accommodating her by transferring her to another store "in town" in the immediate future. The employer had plans to do this with all employees some weeks into the future. Claimant requested the employer accelerate her transfer, due to her work-related health condition. Claimant notified the employer on February 10, 2021, that she would be going to the doctor the following day to seek care for these work-related health conditions.

On February 11, claimant contacted store manager Roger Liebhart via text message to report her diagnoses and to let him know that she could not return to work at the Riverside store while construction was occurring. She also spoke to Liebhart via telephone and he indicated he would get back to her with details on transferring to another location. Liebhart never contacted claimant. She followed up with him three or four days later, and he did not respond to this.

Claimant's weekly benefit amount is \$261.00. Claimant filed a weekly continued claim for benefits for the week of February 7 through February 13, 2021. Claimant reported working that week and earning \$761.00 in wages. Claimant has not reported any wages for any other week.

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

For the reasons that follow, the administrative law judge concludes claimant was not unemployed for the one week ending February 13, 2021. Thereafter, claimant was totally unemployed. The underlying decision is modified in favor of the claimant.

Iowa Code § 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 § 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.

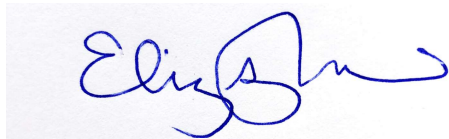
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the evidence in the record shows that claimant was totally unemployed after the week ending February 13, 2021. Therefore, effective February 14, 2021, benefits are allowed, provided she is otherwise eligible. Regarding the prior week, even if claimant worked less than her regular full-time schedule, the administrative record shows she earned well over her weekly benefit amount plus fifteen dollars. Therefore, she was neither totally nor partially unemployed, and benefits are withheld for that week.

**DECISION:**

The April 13, 2021 (reference 03) unemployment insurance decision is modified in favor of the claimant. Claimant was totally unemployed effective February 14, 2021. Benefits are allowed from that point forward, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Elizabeth A. Johnson  
Administrative Law Judge  
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July 12, 2021  
Decision Dated and Mailed

lj/kmj