

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES S MONROE
Claimant

ROC TAPROOM INC
Employer

APPEAL 21A-UI-11349-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 21, 2021, (reference 01) unemployment insurance decision that denied benefits because he refused a recall to work effective May 1, 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2021. Claimant participated. Employer participated through human resources manager Juliet Diaz. The parties waived notice on the issues of whether claimant is considered totally, temporarily or partially unemployed, still employed in the same hours and the same wages, and employer chargeability. The administrative law judge took official notice of the administrative file.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a server at Old Chicago from June 28, 2017 until July 27, 2020, when he separated from employment. When claimant was hired, he was not guaranteed a set number of hours each week and he agreed to that arrangement. Claimant's hours varied because during his employment he attended school full time. During the school year, claimant worked five to ten hours per week, and during breaks claimant worked 20-25 hours per week.

In mid-March 2020, Iowa Governor Kim Reynolds suspended in-person dining. On March 15, 2020, employer closed its doors and no longer had work available for claimant. Beginning May 4, 2020, employer began offering work to claimant and he returned to working his part-time hours. He received an increase in his base pay to \$8.00 per hour rather than \$4.35 per hour, as employer offered an increase in the base pay until June 15, 2020, to incentivize employees to

return to work. Claimant's hours varied upon returning to his employment, as they did prior to the pandemic. Claimant voluntarily missed work due to COVID-19 exposure and vacation, and gave up scheduled shifts on occasion, but there was work available for claimant during this time.

There has been no initial investigation or decision regarding the issue of separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19(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 Admin. Code r. 871-24.23 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.

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 claimant was totally unemployed from March 15, 2020, through May 2, 2020. Employer did not have work available for him. Therefore he is eligible for benefits during this time period. Employer will be relieved of benefit charges as claimant was unemployed due to COVID-19.

From May 3, 2020, through the end of his employment, claimant worked on a part-time basis. If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position with fluctuating hours. He worked part-time for employer from May 3, 2020, going forward. As the claimant continued working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

The issue of separation from employment shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The April 21, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was totally unemployed from March 15, 2020, through May 2, 2020, and is eligible for benefits during that time period. Employer will be relieved of benefit charges as claimant was unemployed due to COVID-19. Claimant is not eligible for benefits effective May 3, 2020, as claimant does not meet the definition of unemployed as he was a part-time employee working under the same hours and conditions for which he was hired.

REMAND:

The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
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July 21, 2021
Decision Dated and Mailed

sa/scn