

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDSEY R DALTON
Claimant

RIVERSIDE CASINO AND GOLF RESORT
Employer

APPEAL 20R-UI-10377-JE-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 2, 2020 (reference 02) that determined she was not able and available for work. After due notice was issued, a hearing was held by telephone conference call on October 13, 2020. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, whether the claimant is still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge, whether the claimant is overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time housekeeper for Riverside Casino and Golf Resort in November 2014. On March 23, 2020, the casino temporarily closed its doors due to the pandemic per the Governor's orders. It reopened June 16, 2020, and the claimant returned to work. The employer paid the claimant April 2, April 16 and April 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed from March 23 through June 15, 2020. So, the issue is whether she was able to and available for work.

Iowa Code section 96.4(3) provides:

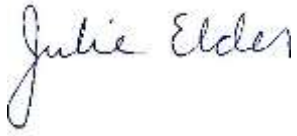
A unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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 4 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The employer did not have work available for the claimant from March 23 through June 15, 2020. The claimant has established she was able to and available for work. Therefore, the claimant is eligible for regular, state-funded unemployment insurance benefits.

DECISION:

The June 2, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective March 29, 2020. Regular unemployment insurance benefits are allowed.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

October 14, 2020
Decision Dated and Mailed

je/sam