

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEATRA L PARKER
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 21A-UI-19322-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available to Work
Iowa Admin. Code r. 871-24.23(26) - Part-Time Same Hours, Wages
Iowa Admin. Code r. 871-24.22(2)h - Available for Part of Workweek
Iowa Admin. Code r. 871-24.23(29) - Available for the Major Portion of Workweek
Iowa Code § 96.1A(37) - Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) - Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Deatra Parker, filed an appeal on August 31, 2021 from the August 26, 2021, (reference 03) unemployment insurance decision that concluded they were not eligible for unemployment insurance benefits due to their being still employed in their job. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 22, 2021. The claimant participated. The employer, West Liberty Foods LLC, responded to the hearing notice and provided a telephone number at which they could be reached for the scheduled hearing, but failed to answer the call. A voicemail message was left, but they did not return the call. Judicial notice was taken of the administrative file.

ISSUES:

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

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: The claimant works full time, with a set Monday-Friday schedule, with some overtime available on weekends, for employer. Her first day of work was January 23, 2019, she is still currently employed there.

Claimant returned from a leave of absence toward the end of March or first of April 2021. She had medical restrictions where she could only work five of her eight hours a day, Monday-Friday and no overtime. Those restrictions were in place at the time of the hearing, October 22, 2021,

with claimant having a doctor's appointment the following week, where possibly the restrictions might be lifted, which would allow claimant to return to normal hours. Claimant is currently employed at the same wages, she is only employed at 25 hours per week, not the 40+ hours that she was working prior to her leave of absence.

The record reflects that claimant's weekly benefit amount is \$528.00 and the wages reported earned for the week ending July 3, 2021 is \$344.00, which is less than the WBA plus \$15.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to and available to work. Claimant is still employed at the same wage rate, but not the same hours, and as such, claimant is partially unemployed, but the employer's account may be subject to charge.

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. 871-24.23(28) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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)h provides:

Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Claimant is a fulltime employee who came back from a leave of absence, with medical restrictions on her hours. She can only work five of her eight hours a day, five days a week. Claimant is currently working twenty-five hours a week, instead of forty, and no overtime, due to her restrictions. The job is still a fulltime position. Claimant is able to work 62.5% of her normal hours.

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

Claimant falls under Iowa Code section 96.1A(37)b(1) and is partially unemployed.

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

Because the claimant does not have other base period wages and the level of employment is not consistent with the base period wage history with this employer, she may be considered partially unemployed and this employer may be liable for benefit charges.

DECISION:

The August 26, 2021, (reference 03) unemployment insurance decision is **REVERSED**. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. Employer may be liable for benefit charges.



Darrin T. Hamilton
Administrative Law Judge

November 8, 2021

Decision Dated and Mailed

dh/kmj