

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEVIN L FIRST**  
Claimant

**NORDSTROM INC**  
Employer

**APPEAL 22A-UI-02035-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant/appellant, Kevin L. First, filed an appeal from the December 21, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on February 14, 2021. Claimant participated. Employer/respondent, Nordstrom Inc., did not participate. Official notice of the administrative records was taken.

**ISSUES:**

Was the claimant employed at the same hours and wages as hired for this employer effective December 5, 2021?  
Was the claimant totally, partially, or temporarily unemployed effective December 5, 2021?  
Has the claimant been able and available effective December 5, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired for this employer on July 10, 2021 in the picking department at the employer’s distribution center. Claimant was hired to work 42 hours per week at \$18.20 per hour plus incentive pay. Effective December 6, 2021, claimant was informed by the employer that he was discharged. Claimant no longer worked at the same hours and wages. Claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

Since December 6, 2021, claimant has worked part-time for Lucy’s restaurant, located in Cedar Rapids.

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

For the reasons that follow, the administrative law judge concludes the claimant did not work the same hours/wages effective December 6, 2021.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for

available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 96.1A, subsection 38, paragraph "b", subparagraph (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".

In this case, the claimant was able and available for work effective December 5, 2021, but permanently separated from employment on December 6, 2021. Benefits are allowed, provided claimant is otherwise eligible.

The real issue regarding the claimant's eligibility for unemployment insurance benefits effective December 5, 2021 is his permanent separation. Therefore, the issue of his permanent separation from employment is remanded to the Benefits Bureau for an initial investigation.

**DECISION:**

The December 21, 2021 (reference 03) initial decision is reversed. The claimant was not working at the same hours and wages effective December 5, 2021. Claimant was able and available for work. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

The issue of claimant's December 6, 2021 permanent separation from employment is remanded to the Benefits Bureau for an initial investigation and decision.



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March 4, 2022  
Decision Dated and Mailed

jlb/mh