

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMY J SCHMELZER
Claimant

KWIK TRIP INC
Employer

APPEAL NO. 21A-UI-14132-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 7, 2021, reference 01, decision that denied benefits effective March 21, 2021, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on August 17, 2021. Claimant participated. Demi Miller represented the employer and presented additional testimony through Jacob Chochenour. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A and NMRO. The administrative law judge took official notice of the employer's April 5, 2021 protest via the SIDES system. The administrative law judge took official notice of the claimant's applications for PUA benefits for the purpose of noting there was not medical documentation attached to either PUA application. The administrative law judge has also taken official notice of the administrative law judge decision in Appeal Number 20A-UI-04804-AD-T.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 21, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 21, 2021.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 21, 2021. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$159.00 before factoring in the federal (U.S. Census) base period wages and \$187.00 after factoring the federal base period wages. The claimant's base period consists of the fourth quarter of 2019 and the first, second, and third quarters of 2020. The claimant's base period quarter wages were as follows:

EMPLOYER	ACCT-LOC	2019/4	2020/1	2020/2	2020/3
DUBUQUE COMMUNITY SCHOOL	101899-000	1586	3072	244	
KWIK TRIP INC	116702-000	2724	656	2012	105
US CENSUS	500914				1887

The claimant's more recent quarterly wages had been as follows:

EMPLOYER	ACCT-LOC	2020/4	2021/1	2021/2
KWIK TRIP INC	116702-000	3542	2283	1749
US CENSUS	500914	?		

The claimant has at all relevant times been employed by Kwik Trip as a part-time Guest Service Coworker (convenience store clerk). While the claimant asserts the Kwik Trip work is on-call, the employer has at all relevant times had two to three shifts per weekly available to the claimant. The employer has not decreased the amount of work available to the claimant and has not decreased the claimant's wages during the relevant period. The employer contacts the claimant on a weekly basis to inquire whether and to what extent the claimant desires to work. The claimant elects on a weekly basis where to work some, all or none of hours, the employer has for her. The Kwik Trip employment is the claimant's primary employment. The claimant's work for the U.S. Census lasted from June 26, 2020 to October 5, 2020. The claimant last performed work for the Dubuque Community School District on or about March 22, 2020. The claimant had worked for the District as an on-call substitute teacher. See the administrative law judge decision in Appeal Number 20A-UI-04804-AD-T.

In connection with the benefit year that started March 21, 2021, the claimant made weekly claims for each of the weeks between March 21, 2021 and July 24, 2021. For that period, the claimant reported wages as follows:

PAYMENT-RECORDS . .		
BWE-DATE	RPT-CODE	AMT-RP
03/27/21	OVER15	108.00
04/03/21	OVER15	217.00
04/10/21	CLEAR	.00
04/17/21	OVER15	217.00
04/24/21	CLEAR	.00
05/01/21	OVER15	217.00
05/08/21	CLEAR	.00
05/15/21	CLEAR	.00
05/22/21	OVER15	108.00
05/29/21	OVER15	217.00
06/05/21	OVER15	217.00
06/12/21	CLEAR	.00
06/19/21	OVER15	217.00
06/26/21	OVER15	108.00
07/03/21	OVER15	217.00
07/10/21	OVER15	325.00
07/17/21	OVER15	325.00
07/24/21	OVER15	325.00

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 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.

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

The claimant is not eligible for benefits for the period beginning March 21, 2021 through July 24, 2021. The claimant's primary employer has continued to make available the same amount of part-time work and the same wages as in original contract of hire. Any reduction in the claimant's work hours or wages during the relevant period has been attributable to the claimant's election to restrict her availability for work. By the claimant's own report, her wages for the weeks ending April 3, April 17, May 1, May 29, June 5, June 19, July 7, July 17, and July 24, 2021 exceed her weekly benefit amount plus \$15.00, which would by itself preclude the claimant from being partially unemployed and prevent the claimant being eligible for benefit as under a theory of partial unemployment. The claimant's reduced or absent wages for the other weeks are attributable to the claimant's decision to restrict her availability for work with the employer. The employer's account shall not be charged for the period of March 21, 2021 through July 24, 2021.

DECISION:

The June 7, 2021, reference 01, decision is affirmed. The claimant is not eligible for benefits for the period beginning March 21, 2021 through July 24, 2021. The employer continued to make the same work and wages available as in the original contract of hire. Any reduction in the claimant's work hours or wages during the relevant period was attributable to the claimant restricting her availability for work. The claimant did not meet the availability requirement and was not temporarily or partially unemployed during the period of March 21, 2021 through July 24, 2021. The employer's account shall not be charged for the period of March 21, 2021 through July 24, 2021.



James E. Timberland
Administrative Law Judge

August 20, 2021
Decision Dated and Mailed

jet/mh