

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL C MOORE
Claimant

D OF S FOODS INC
Employer

APPEAL NO. 21A-UI-06246-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 11, 2021, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on May 6, 2021. Claimant participated personally and had witness Brandon Spencer. Employer participated by Jennifer Kilborn. Employer's Exhibits 1-4 were admitted into evidence

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for D of S Foods, a base period employer, under different terms and conditions than he'd previously been working. Claimant was hired as a full time employee, and documents showed claimant's work history averaging 35-40+ hours a week. Since Covid, claimant has been working far fewer hours, averaging 15-18 hours a week. Employer stated that hours have been cut back as labor costs were too high.

Claimant stated that at all times he has remained able and available to work if there were hours available for him.

It does appear that the wages reported by claimant do not line up with the wages earned as indicated by paycheck stubs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

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 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.

At all times claimant has remained able and available for work.

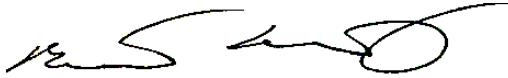
Because the claimant has had his hours reduced by up to 50 percent, claimant is considered partially unemployed. Benefits are allowed.

This matter will be remanded to the investigations and recovery unit to determine if claimant has correctly listed the wages earned when reporting for weekly benefits.

DECISION:

The February 11, 2021, reference 02, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible.

This matter will be remanded to the investigations and recovery unit to determine if claimant has correctly listed the wages earned when reporting for weekly benefits.



Blair A. Bennett
Administrative Law Judge

May 14, 2021
Decision Dated and Mailed

bab/scn