

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY KAY KOCKLER
Claimant

M K PORTFOLIO INC – LP2
Employer

APPEAL 20A-UI-10489-S1-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
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Mary Kay Kockler (claimant) appealed a representative's August 21, 2020, decision (reference 01) that denied benefits based on her employment with M K Portfolio (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 15, 2020. The claimant participated personally. The employer participated by Mary Kay Kockler. The employer is the claimant. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, 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.

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 in November 1990, as a full-time cosmetologist. Due to the Covid-19 pandemic and a governor's proclamation, the employer closed the business from March 23, 2020, through May 14, 2020. The claimant did not work for the employer or any other employer from March 23, 2020, through May 14, 2020. She returned to work on May 15, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$298.00. The claimant received benefits of \$298.00 per week from March 29, 2020, to the week ending May 9, 2020. This is a total of \$1,490.00 in state unemployment insurance benefits after the separation from employment. She also received \$3,000.00 in Federal Pandemic Unemployment Compensation for the five-week period ending May 9, 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.

If a person is not working for more than four consecutive weeks, the person is totally unemployed. In this case, the claimant was separated from work for more than four weeks. She is considered totally unemployed. The issue becomes whether she is able to and available for work. In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish if she is able to and available for work. Iowa Code § 96.4(3).

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:

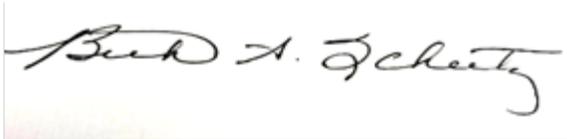
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work after her

separation from employment. Benefits are allowed from March 29, 2020, through May 9, 2020, provided the claimant is otherwise eligible.

DECISION:

The August 21, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was totally unemployed. She was able and available for work. Benefits are allowed from March 29, 2020, through May 9, 2020, provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515)478-3528

October 16, 2020
Decision Dated and Mailed

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