

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASIA C KING

Claimant

APPEAL NO. 20A-UI-10064-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 06/14/20

Claimant: Appellant (5R)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Asia King filed a timely appeal from the August 21, 2020, reference 03, decision that denied benefits effective June 14, 2020, based on the deputy's conclusion that Ms. King was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on October 6, 2020. Ms. King participated. Teresa Zuke represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning June 14, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning June 14, 2020.

Whether the employer's account may be charged for benefits for the period beginning June 14, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Asia King was employed by Casey's Marketing Company as a part-time cashier in the A&W restaurant adjacent to the Casey's located on Nordic Drive in Cedar Falls. Teresa Zuke is Store Manager for that location. Ms. King started the employment in January 2020 and last performed work for the employer on July 17, 2020. Ms. King's wage was \$12.00 an hour. On May 17, 2020 Ms. King began a maternity leave. Prior to the maternity leave, Ms. King worked 15 to 20 hours per week. On or about June 18, 2020, Ms. King notified Ms. Zuke that she would be returning early from her maternity leave on June 23, 2020.

During the week of June 14-20, 2020 Ms. King established an original claim for unemployment insurance benefits that Iowa Workforce Development deemed effective June 14, 2020. IWD set Ms. King's weekly benefit amount at \$139.00. No benefits have been disbursed in connection with the claim. After Ms. King established her claim for benefits, she commenced making

weekly claims. For the week that ended June 20, 2020, the week during which Ms. King was still on maternity leave, Ms. King reported zero wages.

Even though Ms. King gave short notice of her intention to return to work early from her maternity leave, and even though Ms. Zuke had already made the work schedule for the week of June 21-27, 2020, Ms. Zuke was able to find 15.475 hours of work for Ms. King for the week. Ms. King earned \$185.70 for the week that ended June 27, 2020, but reported only \$12.00 in wages when she made her weekly claim for that week.

In connection with her return to work following her maternity leave, Ms. King told Ms. Zuke that she no longer wished to work split shifts and wished to reduce her work days to three per week. Ms. King cited her new baby as the reason for reducing her availability for work. In keeping with Ms. King's request, Ms. Zuke scheduled Ms. King to work 9.25 to 12.25 hours during the week that ended July 4, 2020. Ms. King worked only 6.25 of hours, for which she earned \$75.00. Ms. King called in absent for one of her three shifts and thereby missed out on three to six hours of work.

Ms. Zuke scheduled Ms. King to work 8.65 hours, three shifts, during the week that ended July 11, 2020. Ms. King worked the hours, for which she earned \$103.80.

Ms. Zuke scheduled Ms. King to work nine hours, three shifts, during the week that ended July 18, 2020. Ms. King only worked 5.43 hours, for which she earned \$65.16. Ms. King left 45 minutes early from one shift. Ms. King's third shift of the week was scheduled for July 18, 2020. Ten minutes before the scheduled start of the shift, Ms. King sent a text message to employer indicating, "I no longer work there."

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, in pertinent part, as follows:

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.

Iowa Admin. Code r. 871-24.23(10), (16) and (26) 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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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 96.19(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 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).

Because the lower decision concerned the period during which Ms. King was still employed with Casey's, and because the evidence indicates July 18, 2020 separation from the employment, the administrative law judge had confined the scope of the hearing and this decision to the period of June 14, 2020 through July 18, 2020. Ms. King did not meet the availability requirement during the week that ended June 20, 2020. During that week, Ms. King was still on leave of absence that she requested and that employer approved, was voluntarily unemployed, and was unavailable for work.

During the week that ended July 27, 2020, Ms. King worked slightly more than 15 hours, which was in keeping with the number of hours she had worked prior to her maternity leave. Ms. King would not meet the availability requirement to be eligible for benefits and cannot be considered partially unemployed during that week.

During the weeks that ended July 4, July 11 and July 18, 2020, Ms. King was working reduced hours by her choice, pursuant to her request to work only three shifts per week. For the weeks that ended July 4 and July 18, 2020, Ms. King further reduced her work hours by not appearing for shifts. Based on the voluntary restriction of availability and the voluntary reduction in work hours, Ms. King did not meet the availability requirement and cannot be deemed partially unemployed during the weeks that ended July 4, July 11 and July 18, 2020.

Ms. King is not eligible for benefits for the period of June 14, 2020 through July 18, 2020. The employer's account will not be charged for benefits for that period. This matter will be remanded to the Benefits Bureau for entry of a decision regarding the July 18, 2020 separation from the employment and for determination of whether Ms. King was able to work and available for work during the period that began July 19, 2020.

DECISION:

The August 21, 2020, reference 03, decision is modified as follows. The claimant was not available for work and was not partially and/or temporarily unemployed during the period of June 14, 2020 through July 18, 2020. The claimant is not eligible for benefits for the period of June 14, 2020 through July 18, 2020. The employer's account will not be charged for benefits for that period.

This matter is **remanded** to the Benefits Bureau for entry of a decision regarding the July 18, 2020 separation from the employment and for determination of whether the claimant was able to work and available for work during the period that began July 19, 2020.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>



James E. Timberland
Administrative Law Judge

October 8, 2020
Decision Dated and Mailed

jet/scn

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