

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA S MYERS
Claimant

HAB PETROLEUM INC
Employer

APPEAL 21A-UI-11356-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 19, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was not able to an available for work. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2021. Claimant Samantha S. Myers participated. Employer Hab Petroleum did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 7, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a cashier from February 17, 2017, through March 26, 2021, when she separated from employment.

Claimant filed her initial claim for benefits effective April 5, 2020, and reactivated her claim effective March 7, 2021. She began filing weekly claims effective March 7, 2021, because her place of employment closed for three days due to the death of the owners' father. During that week she missed at least two shifts. However, claimant was unavailable to provide the dates of the closure, the dates of the missed shifts, or how many hours she worked that week. Claimant filed weekly benefits the next two weeks despite the fact that she testified she worked her regular schedule. Claimant continued filing weekly claims for benefits after her separation.

There has been no initial investigation or decision regarding the issue of separation from employment and whether claimant is able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work. Benefits are denied.

Iowa Code § 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.

Iowa Code § 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".

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been permanently separated from an employer, whereas, an individual who is temporarily unemployed has not been permanently separated from employment. To be partially unemployed, an individual must be working less than their regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.*

Here, there is insufficient evidence to make a determination regarding whether claimant met the availability requirement or was temporarily and/or partially unemployed during the period beginning March 7, 2021. Employer did not participate in the appeal hearing and claimant provided exceedingly sparse information. The administrative law judge will remand this matter to the Integrity Bureau of Iowa Workforce Development for further investigation and determination of whether the claimant has been able to work, available for work and temporarily and/or partially unemployed during the period of March 7, 2021, through March 27, 2021, as well as whether the claimant properly reported wages.

DECISION:

The April 19, 2021, (reference 02) unemployment insurance decision is affirmed, pending the outcome of the remanded issue. The claimant was not able to and available for work effective March 7, 2021 and regular, state-funded unemployment insurance benefits are denied.

REMAND:

This matter is remanded to the Integrity Bureau of Iowa Workforce Development for further investigation and determination of whether the claimant has been able to work, available for work and temporarily and/or partially unemployed, and whether she properly reported wages during the period of March 7, 2021, through March 27, 2021.

The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 21, 2021
Decision Dated and Mailed

sa/scn