

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNIFER A CONWAY**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 21A-UI-19593-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/25/21  
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Jennifer A Conway, the claimant/appellant, filed an appeal from the August 31, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits as of July 25, 2021. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2021. Ms. Conway participated and testified. The employer participated through Katrina Baker, store leader. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Conway able to and available for work?  
Is Ms. Conway temporarily or partially unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Conway began working for the employer, a base period employer, on August 13, 2016. She works as a part-time guest service co-worker. Ms. Conway works about eight hours each week for this employer and she is paid \$18.45 per hour. Ms. Conway has continuously worked for the employer since her hire date under the same terms and conditions as contemplated at hire. Ms. Conway has base period wages from this employer only.

Ms. Conway also worked for employer John Deere, another base period employer. She began working for this employer in April 2021. She worked as a full-time assembler. She worked a set schedule and was paid \$22.00 per hour. John Deere closed from July 25, 2021 through August 7, 2021. Ms. Conway returned to work at John Deere on August 9, 2021. Ms. Conway's employment ended with John Deere at the end of August 2021.

The issue of Ms. Conway's separation from employment with John Deere has not been investigated by the Benefits Bureau of Iowa Workforce Development.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Conway is partially unemployed from July 25, 2021 through August 7, 2021, and this part-time employer's account is relieved of charges.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 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.

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 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Ms. Conway is partially unemployed. She was laid off from her full time job at John Deere from July 25, 2021 through August 7, 2021, and continued working at her part time job, Kwik Trip, at her same wages and hours. Partial benefits are allowed as long as she is otherwise eligible. Inasmuch as this part-time employer is offering Ms. Conway the same wages and hours as in the base period contemplated at hire, no benefit charges shall be made to its account.

#### **DECISION:**

The August 31, 2021, (reference 01) unemployment insurance decision is modified in favor of appellant, Ms. Conway. Ms. Conway was partially unemployed from July 25, 2021 through August 7, 2021. Benefits are allowed during these weeks, provided she is otherwise eligible. The employer's account is relieved of charges.

**REMANDS:**

The issue of Ms. Conway's monetary eligibility is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.

The issue of Ms. Conway's separation from employment with John Deere is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge  
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November 9, 2021  
Decision Dated and Mailed

dz/scn