

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORETTA L LOTT
Claimant

SEVENTH AVENUE INC
Employer

APPEAL 20A-UI-09429-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (1/R)

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
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Seventh Avenue (employer) appealed a representative's July 27, 2020, decision (reference 01) that concluded Loretta Lott (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 23, 2020. The claimant participated personally. The employer participated by Teah Shirk, Operations Supervisor. 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 on March 8, 2018, as a part-time forklift operator. The employer laid off the claimant for lack of work from March 10, 2020, through May 28, 2020. On June 5, 2020, the claimant quit work because she was not offered a full-time position when one became available. The full-time job was given to an employee with less seniority.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 17, 2020. Her weekly benefit amount was determined to be \$366.00. The claimant received benefits from May 17, 2020, to the week ending May 30, 2020, for a total of \$583.00 in state unemployment insurance benefits after May 17, 2020. She also received \$1,200.00 in Federal Pandemic Unemployment Compensation for the two-week period ending May 30, 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.

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".

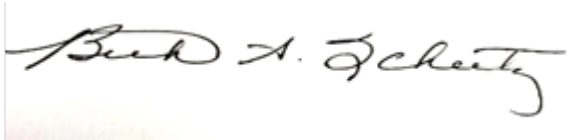
When a worker is unemployed and paid no wages for more than four weeks, she is considered to be totally unemployed. The claimant was paid no wages for more than four weeks. The parties agree the claimant was totally unemployed through May 28, 2020, because the employer did not have work for the claimant. 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 while she was laid off for lack of work. The claimant is eligible to receive unemployment insurance benefits from May 17, 2020, through May 30, 2020.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The July 27, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is able to work and available for work. Benefits are allowed from May 17, 2020, through May 30, 2020, provided the claimant is otherwise eligible.

The issue of the claimant's separation from employment is remanded for determination.



Beth A. Scheetz
Administrative Law Judge
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September 25, 2020
Decision Dated and Mailed

bas/scn