

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVIN ROLING

Claimant

APPEAL 20A-UI-12370-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATFISH CHARLIES LLC

Employer

OC: 03/29/20

Claimant: Appellant (1)

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 § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On October 7, 2020, the claimant filed an appeal from the October 1, 2020, (reference 04) unemployment insurance decision that denied benefits effective May 17, 2020. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2020. Claimant participated personally and through his mother, Jessica Houselog. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in March 2018. Claimant last worked as a part-time host. Claimant was off work from March 13, 2020, until July 3, 2020.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Governor Kim Reynolds issued a proclamation suspending in-person dining effective May 17, 2020. Employer took claimant off the schedule at that time.

On May 13, 2020, employer asked claimant when he would be available to return to work. Employer reopened on May 15 or 16, 2020, and had work available for claimant. Claimant's mother determined he should not go back to work at that time because he frequently touches his face and she was worried this would contribute to his spreading or contracting COVID 19. Claimant's sister-in-law also works for employer and returned to work on July 1, 2020. Claimant

returned to work at that time, as his aunt could help him with wearing his mask and reminding him not to touch his face.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective July 5, 2020.

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 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 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.

Here, claimant was still employed at the same hours and wages when he returned to part-time work from July 3, 2020, going forward. Therefore, claimant is not eligible for benefits after the date of his return. However, if claimant has since become totally unemployed, he may reopen his claim for unemployment insurance benefits and a new determination will be made as to whether he is eligible as of the date he reopened the claim.

DECISION:

The October 1, 2020, (reference 04) unemployment insurance decision is affirmed. The claimant is not available for work effective July 5, 2020, and regular, state-funded unemployment insurance benefits are denied.



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

December 16, 2020
Decision Dated and Mailed

cal/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.