

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAKEENA M PENDLETON
Claimant

APPEAL NO. 21A-UI-05513-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SINGLESPEED BREWING CO
Employer

OC: 03/15/210
Claimant: Appellant (4R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 16, 2021, reference 02 (o.c. 3/15/21) decision that denied benefits effective November 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on April 26, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-05512-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, KPYX, the reference 01 and 02 (o.c. 3/15/20) decisions, the reference 01 (o.c. 3/14/21) decision, and the application for PUA benefits.

ISSUE:

Whether the claimant was able to work and available for work during the period that began November 29, 2020.

Whether the claimant was temporarily and/or partially unemployed during the period that began November 29, 2020.

Whether the employer's account may be charged for benefits for the period beginning November 29, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 15, 2020 and an additional claim that was effective November 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$216.00.

After the claimant filed the November 29, 2020 additional claim, she made timely weekly claims for each of the consecutive weeks between November 29, 2020 and March 13, 2021, at which time the benefit year expired.

The claimant began employment with Singlespeed Brewing Company in May 2017 as a part-time dishwasher. In November 2017, the claimant began working for the employer as a full-time prep cook. The claimant continued in the full-time cook duties until March 19, 2020, when she was laid off work in connection with a COVID-19, based shutdown. During this period of full-time employment, the claimant worked 9:00 a.m. to 4:00 p.m. five days a week. The claimant generally worked 38 hours per week. The claimant's wage was \$10.00 an hour.

The claimant's supervisor, Kegan Bacon, recalled the claimant to the prep cook duties effective September 27, 2020. The employer brought the claimant back at an \$11.00 an hour wage. Though the claimant was available for regular full-time work, the employer did not have full-time work available. The claimant did not change her availability for work and did not refuse any work hours. The claimant continued to be available for full-time work until January 17, 2021. During this time back at the employment, the claimant estimates that she missed a total of three days due to chronic back issues. The claimant's weekly wages for the period of November 29, 2020 through January 16, 2021 did not exceed her weekly benefit amount plus \$15.00.

After the claimant worked on January 17, 2021, she commenced an approved leave of absence in connection with her need to undergo surgery for carpal tunnel release on her left hand. Going into the surgery, the surgeon told the claimant that would need to be off work for six to eight weeks following the surgery. On January 21, 2021, the claimant underwent surgery for carpal tunnel release on her left hand. The procedure did not go well. The surgeon kept the claimant off work until the second week in March 2021, at which time the surgeon released the claimant to return to work, but not to return to her regular duties. The claimant believes she could have worked as a host or bartender.

During the second week in March 2021, the claimant took a medical release document to the employer. The employer agreed to get back to the claimant, but did not.

This contact with the employer in mid-March 2021 occurred right about the time the claimant's benefit year was coming to an end. The claimant established a new original claim that was effective March 14, 2021. An Iowa Workforce Development deputy later entered an April 14, 2021, reference 01 (o.c. 3/14/21) decision that disqualified the claimant for unemployment insurance benefits, based on the deputy's conclusion that the claimant was discharged on March 14, 2021 for excessive unexcused absences. The decision relieved the employer of liability for benefits in connection with the purported discharge.

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:

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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(10) and (35) 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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Code section 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.

If a claimant 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).

This matter concerns the period that followed the November 29, 2020 "additional claim" for benefits. The evidence establishes that during the period of November 29, 2020 through January 16, 2021, the claimant was able to work, available for work, but partially unemployed. The claimant is eligible for benefits for the weeks between November 29, 2020 and January 16, 2021, provided she meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for determination of the claimant's actual weekly wages for that period and determination of the applicable weekly benefit amount. The employer's account may be charged for benefits for the period of November 29, 2020 through January 16, 2021.

During the period of January 17, 2021 through the March 13, 2021 end of the benefit year, the claimant was on an approved leave of absence, was under a doctor's care, and had not been released to return to her regular duties. The claimant did not meet the able and available requirements during this period and is not eligible for benefits for this period.

Based on the April 14, 2021, reference 01 (o.c. 3/14/21) decision that disqualified the claimant for benefits in connection with a purported March 14, 2021 discharge, the administrative law judge need not further address the able and available issues for the period beginning March 14, 2021.

DECISION:

The February 16, 2021, reference 02, decision is modified as follows. During the period of November 29, 2020 through January 16, 2021, the claimant was able to work, available for work, but partially unemployed. The claimant is eligible for benefits for the weeks between November 29, 2020 and January 16, 2021, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the period of November 29, 2020 through January 16, 2021.

During the period of January 17, 2021 through the March 13, 2021 end of the benefit year, the claimant was on an approved leave of absence, was under a doctor's care, and had not been released to return to her regular duties. The claimant did not meet the able and available requirements during this period and is not eligible for benefits for this period.

This matter is **remanded** to the Benefits Bureau for determination of the claimant's actual weekly wages for the period between November 29, 2020 January 16, 2021 and determination of the applicable weekly benefit amount.



James E. Timberland
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

jet/mh