

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH M VANGUNDY
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 21A-UI-10649-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (4R)

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) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On April 5, 2021, claimant, Elizabeth M. Vangundy, filed an appeal from the March 30, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was still employed for the same hours and wages with the employer, Pilot Travel Centers, LLC, and was not partially unemployed. The parties were properly notified about the hearing held by telephone on July 2, 2021. The claimant participated personally. The employer participated through Restaurant General Manager Tanya Calef. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant partially unemployed effective August 2, 2020?
Is the claimant available for work effective October 25, 2020?
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: The claimant was employed full-time as a sandwich artist beginning on August 12, 2019. She remained employed with the employer as of the date of the hearing.

In approximately August 2020, claimant's hours were reduced by the employer due to the COVID-19 pandemic. At that time, she was working approximately 20 hours per week, down from full-time hours. In late October 2020, claimant stopped working because she was preparing for the birth of her child. She officially went on maternity leave November 12, 2020. Her maternity leave was scheduled to last six weeks.

In approximately December 2020, claimant was released to work by her doctor without restrictions. However, claimant did not contact the employer and inform it she was ready to return to work. Claimant monitored the application the employer uses for scheduling, and it

continued to say that claimant was on maternity leave. The employer had work available for claimant, with the same wages and number of hours as prior to her leave, as soon as her maternity leave was over.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed between August 2, 2020, and October 18, 2020. The claimant is not available for work as of October 25, 2020. Benefits from that point forward are denied.

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".

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 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits between the weeks ending August 2, 2020, and October 18, 2020. She was not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871—24.23(26). The claimant was hired to work full-time hours. Her hours were reduced by half beginning the week ending August 2, 2020, and she reported a reduction in wages that week as a result. This persisted until the week ending October 18, 2020. She was partially unemployed for this period.

Beginning the week ending October 25, 2020, claimant was on leave related to her pregnancy and childbirth. This I considered a voluntary period of unemployment. As such, claimant was not available for work and is not eligible for benefits. In addition, though she was aware that her maternity leave was scheduled to last six weeks, and though she was released to return to work by her physician, claimant never did return to the employer and request to be scheduled. The employer had work available for claimant as soon as her maternity leave ended. Claimant was not available for work at any point after October 25, 2020, and benefits for that period are denied.

DECISION:

The March 30, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant.

Claimant was partially unemployed, but able to and available for work and is eligible for benefits from August 2, 2020, through October 18, 2020. Benefits are allowed, provided claimant is otherwise eligible.

Claimant was not available for work and is not eligible for benefits beginning October 25, 2020. Benefits are denied beginning on that date.

REMAND:

The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Alexis D. Rowe
Administrative Law Judge

July 15, 2021
Decision Dated and Mailed

ar/kmj