

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSHUA J WAJDA**  
Claimant

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

**APPEAL 20A-UI-06531-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 15, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to him still being employed at the same hours and wages. The parties were properly notified of the hearing. A telephone hearing was held on July 24, 2020. The claimant, Joshua J. Wajda, participated personally. The employer, Riverside Casino and Golf Resort, participated through witness Anna Cavanaugh. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total or partial unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on August 7, 2006. Claimant worked full-time as a bartender and supervisor. He had a set schedule for his hours each week. This employer operates a casino. The casino was closed March 16, 2020 due to the COVID 19 pandemic. Claimant was paid his average weekly wages for the remainder of March and April of 2020.

The claimant filed his original claim for unemployment insurance benefits effective April 19, 2020. His weekly-benefit amount is \$277.00. Claimant reported the wages he earned for the week-ending April 25, 2020 in the gross amount of \$389.00. Claimant reported the wages he earned for the week-ending May 2, 2020 in the gross amount of \$389.00. Claimant did not work or earn wages for the week-ending May 9, 2020. Claimant earned vacation pay and began working part-time for another employer the week-ending May 16, 2020. He reported gross wages and vacation pay earned of \$666.00 for the week-ending May 16, 2020. Claimant reported his part-time wages earned with his new employer for the week-ending May 23, 2020

in the gross amount of \$300.00. Claimant has found new full-time employment effective May 24, 2020 and has not filed any further weekly-continued claims for benefits.

Claimant was able to and available for work for this regular full-time employer if work would have been available to him during the month of April and May, 2020. The casino re-opened for business effective May 27, 2020. Claimant is now listed as an on-call employee with this employer rather than a full-time employee.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 96.7(2)a(2)a provides:

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.

(emphasis added).

For the week-ending April 25, 2020, claimant earned wages in excess of his weekly-benefit amount, plus \$15.00. As such, benefits are denied for that week pursuant to Iowa Code § 96.19(38).

For the week-ending May 2, 2020, claimant earned wages in excess of his weekly-benefit amount, plus \$15.00. As such, benefits are denied for that week pursuant to Iowa Code § 96.19(38).

For the week-ending May 9, 2020, claimant did not earn any wages and was able to and available for work. Benefits are allowed for the week-ending May 9, 2020, provided he is otherwise eligible.

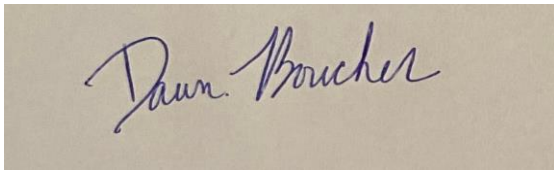
For the week-ending May 16, 2020, claimant earned wages in excess of his weekly-benefit amount, plus \$15.00. As such, benefits are denied for that week pursuant to Iowa Code § 96.19(38).

For the week-ending May 23, 2020, claimant earned wages in excess of his weekly-benefit amount, plus \$15.00. As such, benefits are denied for that week pursuant to Iowa Code § 96.19(38).

**DECISION:**

The June 15, 2020 (reference 01) decision is modified in favor of the appellant. Claimant is partially unemployed for the week-ending May 9, 2020 and benefits are allowed, provided the claimant is otherwise eligible, for that one week only. The claimant is not partially unemployed for any of the other weekly-continued claims that he has filed, including the week-ending April 25, 2020; May 2, 2020; May 16, 2020 and May 23, 2020. Benefits are denied for those weeks pursuant to Iowa Code § 96.19(38). This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

**REMAND:** The chargeability issue of whether charges may be made against this employer due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of the allocation of charges.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style and is positioned above a horizontal line.

Dawn Boucher  
Administrative Law Judge

July 31, 2020  
Decision Dated and Mailed

db/mh

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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. If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus. **You will need to apply for PUA to determine your eligibility under the program.** For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>. If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.