

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MANDI J BIRCHMIER
Claimant

RACCOON VALLEY MANAGEMENT LLC
Employer

APPEAL 20A-UI-07394-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On July 2, 2020, Raccoon Valley Management, LLC (employer) filed an appeal from the June 29, 2020, reference 01, unemployment insurance decision that allowed benefits effective March 29, 2020, based upon the determination Mandi J. Birchmier (claimant) was partially unemployed. After due notice was issued, a telephone hearing was held on August 7, 2020. The claimant participated personally. The employer participated through Cory Anderson, General Manager, and Matt Russell, Area Supervisor. The Claimant's Exhibits A through E and the Employer's Exhibit 1 were admitted into the record without objection.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 29, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in June 2015 as a Restaurant Department Manager (RDM) 1. The claimant was hired for and worked Monday through Friday, 4:00 a.m. to 1:00 p.m. In the first quarter of 2020, the claimant was going to work a couple of evenings a week for approximately a month to assist the employer. The arrangement was not meant to be a permanent situation.

In mid-March as a result of the COVID-19 pandemic, the employer lost up to 40% of its business. The hours to the restaurant also changed and it opened later and closed earlier. The claimant notified the employer she could no longer close and requested to return to working solely her morning shift. Cory Anderson, General Manager, told her he had enough people and she could not return to that shift. He started scheduling her to work only on Sundays.

The claimant filed her claim for benefits effective March 29 and her weekly benefit amount is \$518. She has reported wages earned each week during her claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed effective March 29, and she is considered able to and available for work. Benefits are allowed.

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:

Definitions.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the claimant's version of events that she was available for work but was told there were no hours available. The employer's contention that it had the claimant's normal shift available after March 29 and she refused to work is not credible. The employer's business had lost 40% of its business and the hours of operation shortened. Prior to the pandemic, payroll usage was already an issue at the store, and Cory Anderson, General Manager, offered gift cards to employees to work off the clock. Finally, Anderson provided testimony under oath that was contradicted by exhibits in the record.

The claimant was employed at her normal job, working less than her regular full-time week, and earning less than her weekly benefit amount plus fifteen dollars. She is partially unemployed effective March 29. Benefits are allowed in any week in which she earns less than her weekly benefit amount plus fifteen dollars. As she is partially unemployed under Iowa Code section 96.19(38)(b)(1), the issue of whether she was able to and available for work is moot.

DECISION:

The June 29, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is partially unemployed effective March 29, 2020. Benefits are allowed in any week in which she earns her weekly benefit amount plus fifteen dollars.



Stephanie R. Callahan
Administrative Law Judge

August 17, 2020
Decision Dated and Mailed

src/sam