

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SAMANTHA M GOOD**  
Claimant

**KINSETH HOTEL CORPORATION**  
Employer

**APPEAL 21A-UI-08440-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/31/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.19(38) – Total, partial unemployment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

On March 25, 2021, Samantha Good (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 23, 2021 (reference 02) that denied benefits as of January 31, 2021 based on a finding claimant is still employed for the same hours and wages.

A telephone hearing was held on June 8, 2021. The parties were properly notified of the hearing. Claimant participated personally. Her supervisor, General Manager Eric Nelson, participated as a witness for her. Kinseth Hotel Corporation (employer/respondent) participated by General Manager Suzy Ridder and was represented by Hearing Rep. Thomas Kuiper.

Claimant's exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on September 20, 2017 as a sales manager at its Courtyard property. Claimant transferred to a full-time, salaried guest service manager position on October 21, 2020 at employer's Residence Inn property. Claimant was discharged from that position on February 2, 2021 due to attendance issues. This included refusing to cover a shift as required on January 28, 2021 and failing to appear for her shift or properly report her absence on December 24, 2020. Claimant had previously been warned regarding attendance issues.

Employer offered to hire claimant for a part-time, hourly sales associate position the following day, on February 3, 2021. Claimant accepted this offer. There was no guarantee of certain hours in this position and claimant was scheduled to work as business dictated. Claimant did not work full-time hours initially because of business being slow. Business did pick up later and she has been working approximately 40 hours per week since early-April 2021. Claimant remains employed in this position.

Claimant filed a claim for benefits each week from the benefit week ending February 6, 2021 through the week ending April 3, 2021. Claimant was working as work was available during these weeks. She reported wages earned each week.

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

For the reasons that follow, the decision dated March 23, 2021 (reference 02) that denied benefits as of January 31, 2021 based on a finding claimant is still employed for the same hours and wages is AFFIRMED.

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.

Claimant is not totally, partially, or temporarily unemployed during the weeks filed. This is because claimant was still employed and performing work in the part-time, hourly sales associate position during this period. There was no guarantee of certain hours in this position at the time of hire and claimant was scheduled to work as business dictated. Because claimant was still employed in this position at the same hours and wages as contemplated in the contract of hire, she is not eligible for benefits during the weeks filed.

**DECISION:**

The decision dated March 23, 2021 (reference 02) that denied benefits as of January 31, 2021 based on a finding claimant is still employed for the same hours and wages is AFFIRMED.



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

July 19, 2021  
Decision Dated and Mailed

abd/lj

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.