

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAITLYN J MARTENS
Claimant

PARLOR CITY ICE CREAM LLC
Employer

APPEAL 22A-UI-02600-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/12/21
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able to and Available for Work – Layoff
Iowa Code § 96.1A(37) – Total, Partial, Temporary 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 employer/appellant filed an appeal from the December 29, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon the claimant being on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2022. The claimant participated personally. The employer participated through witness Angela Hoyt. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Is the claimant eligible for total, temporary 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 her employment for with this employer in August of 2015. She is currently employed as a full-time cashier. The claimant works in an ice cream parlor. On or about December 12, 2021, the employer closed its location for the winter months. Claimant is scheduled to resume her regular full-time employment when the employer opens the location again on Sunday, February 27, 2022. Claimant was able to and available for work if the location would have been open and operating.

Claimant filed an original claim for benefits effective December 12, 2021. She filed weekly continued claims through January 22, 2022. She reported that she did not earn any wages for any of the weekly-continued claims filed as she was not working during this employer's closure.

REASONING AND CONCLUSIONS OF LAW:

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

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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.

Iowa Admin. Code r. 871-24.1(113)a provides:

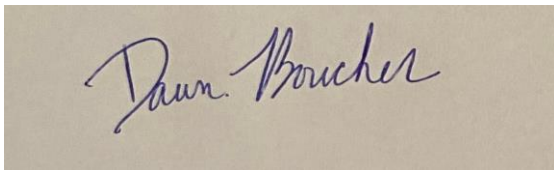
Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

In this case, the claimant was temporarily unemployed for the first four weeks of her claim pursuant to Iowa Code § 96.1A(37). After her temporary unemployment, she remained totally unemployed through the last weekly-continued claim that she filed, which was January 22, 2022. Claimant credibly testified that she was able to and available for work. As such, benefits are allowed, provided the claimant remained otherwise eligible. This employer's account may be subject to charges.

DECISION:

The December 29, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was temporarily unemployed and then totally unemployed due to lack of work. Benefits are allowed effective December 12, 2021, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

March 4th, 2022
Decision Dated and Mailed

db/db