

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLETTE WOLFE

Claimant

BRICK STREET MARKET LLC

Employer

APPEAL 21A-UI-20815-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 15, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 9, 2021. The claimant participated. The employer participated through Marsha Nekkinda.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
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: Claimant worked for this employer as a part-time waitress from May 2016 until September 2021. Claimant established a claim for unemployment insurance benefits with an effective date of March 14, 2021 and made weekly continued claims each week through July 17, 2021.

Prior to COVID-19, claimant worked approximately 15 hours per week. She was not guaranteed a set number of hours or shifts each week, and agreed to the arrangement upon hire. After COVID-19, employer did close its café in the afternoon, but claimant continued to work each week and her hours varied based upon her availability and business needs of the employer. Employer reported the following hours worked each week in conjunction with the weekly continued claims filed:

| | |
|----------|-------|
| 03/20/21 | 7.93 |
| 03/27/21 | 7.62 |
| 04/03/21 | 12.88 |
| 04/10/21 | 0 |
| 04/17/21 | 11.5 |
| 04/24/21 | 8.12 |
| 05/01/21 | 12.12 |
| 05/08/21 | 7.77 |
| 05/15/21 | 12.12 |
| 05/22/21 | 7.2 |
| 05/29/21 | 11.13 |
| 06/05/21 | 4.15 |
| 06/12/21 | 4.23 |
| 06/19/21 | 8.38 |
| 06/26/21 | 0 |
| 07/03/21 | 4.73 |
| 07/10/21 | 4.73 |
| 07/17/21 | 3.43 |
| | |

For the week ending April 10, 2021, claimant did not perform work due to a vacation. Neither party knew why claimant did not perform work for the week ending June 26, 2021, but employer stated it was frequently understaffed and believed hours would have been available to claimant that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for unemployment insurance benefits effective March 14, 2021.

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 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 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".

under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

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.

For the week ending April 10, 2021: Claimant was totally unemployed because she did not perform any work that week. However, claimant did not perform work because she was on vacation. She was not able and available for work pursuant to Iowa Admin. Code r. 871-24.23(25). Benefits are denied.

For all other weeks: Because the claimant was hired to work only part-time hours and was not guaranteed full-time hours, schedules or shifts, the claimant is not considered to be unemployed

within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that hours will vary based upon business needs. Thus since the employer continued to provide regular part-time hours, and claimant was employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed. Benefits are denied.

DECISION:

The unemployment insurance decision dated September 15, 2021, (reference 01) is affirmed. The claimant is not able and available for work effective March 14, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied effective March 14, 2021.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

December 9, 2021
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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.

Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>