

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E SHEEHAN
Claimant

“SWAMI MOTEL INC
Employer

APPEAL 20A-UI-10981-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/17/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On September 8, 2020, Swami Motel Inc. (employer/appellant) filed a timely appeal from the August 28, 2020 (reference 01) unemployment insurance decision that allowed benefits beginning May 17, 2020 based on a finding claimant was unemployed due to a short-term layoff and was able and available for work during the layoff.

A telephone hearing was held on October 27, 2020. The parties were properly notified of the hearing. Mark Sheehan (claimant/appellant) did not register a number for the hearing and did not participate. Employer participated by Human Resources/Payroll Amy Mortensen.

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?

FINDINGS OF FACT:

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

Claimant began working for employer on July 14, 2018. Claimant is still employed by employer as a part-time housekeeper. Claimant was hired with no guarantee of hours and with the understanding that hours would vary depending on how busy the hotel was. Claimant typically works between 20 and 30 hours per week. Claimant's hours did decrease significantly in the pay periods ending April 10, April 24, and May 8. However, after that claimant has been working

between 18 and 25 hours per week. Claimant was never laid off and was always available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 28, 2020 (reference 01) unemployment insurance decision that allowed benefits beginning May 17, 2020 is REVERSED. Claimant is not totally, partially, or temporarily unemployed and is therefore ineligible for benefits.

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 reduce workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 96.7(2)a(2) provides:

2. 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.

Claimant was hired as a part-time housekeeper, with no guarantee of hours and with the understanding that hours would vary depending on how busy the hotel was. Claimant is still employed in the same way – that is, as a part-time housekeeper with fluctuations in hours depending on how busy the hotel is. Claimant is therefore not partially unemployed. Neither does the evidence indicate claimant was totally or temporarily unemployed. Claimant is therefore ineligible for benefits. Because claimant is employed by employer in the same way as during the base period, benefits shall not be charged to employer's account.

DECISION:

The August 28, 2020 (reference 01) unemployment insurance decision that allowed benefits beginning May 17, 2020 is REVERSED. Claimant is not totally, partially, or temporarily unemployed and is therefore ineligible for benefits. Employer's account is not subject to charge.



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

October 29, 2020
Decision Dated and Mailed

abd/scn

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 currently 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>.