

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LULEYMA A PEREZ

Claimant

APPEAL 21A-UI-10759-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06/07/20

Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.1(A)37 – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 15, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on July 2, 2021. The claimant participated personally. Language Link provided language interpretation services to the claimant. The employer participated through witness Tami Story. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on April 17, 2021. She worked full-time as a production worker. Her last day physically worked on the job was March 6, 2021. She has permanently separated from employment with this employer.

Claimant filed an original claim for benefits effective June 7, 2020. She filed an additional claim for unemployment insurance benefits effective March 7, 2021. From March 7, 2021 through the week-ending June 5, 2021 (which was the end of her June 7, 2020 benefit year), she did not work or earn wages. Claimant did not work from March 7, 2021 through March 13, 2021 because she was ill and unable to work as she was having COVID-19 like symptoms. She recovered and has been able to and available for work from March 14, 2021 through June 5, 2021. Claimant filed another original claim for benefits effective June 6, 2021.

Claimant testified that she has been able to work and available for work each week from March 14, 2021 through June 5, 2021. Claimant testified that she has been actively searching for work; however, her weekly-continued claims reflect that she has not made at least two employer contacts for each week in which she filed weekly-continued claims for benefits from March 7, 2021 through June 5, 2021.

The matter of whether the claimant's separation from employment is disqualifying will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant is making an earnest and active work search and whether a work search warning is appropriate will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant's Group Code for her June 7, 2020 claim year is correct will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.4(3) provides:

Required Findings.

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) was replaced by Iowa Code § 96.1A(37). Iowa Code § 96.1A(37) provides as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

For the week of March 7, 2021 through March 13, 2021, the claimant was ill and unable to work. Benefits are denied for that one-week period. Effective March 14, 2021, the claimant was able to and available for work but was separated from employment by that time. As such, benefits are allowed effective March 14, 2021, provided the claimant remains otherwise eligible.

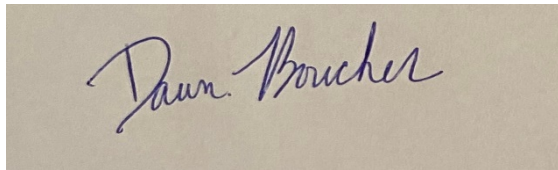
DECISION:

The April 15, 2021 (reference 02) decision is modified in favor of the appellant. Claimant was not able to and available for work for the one-week period of March 7, 2021 through March 13, 2021 and benefits are denied for that one-week period.

Effective March 14, 2021, the claimant was able to and available for work. Benefits are allowed effective March 14, 2021, provided the claimant remains otherwise eligible.

REMAND:

The matter of whether the claimant's separation from employment in March of 2021 is disqualifying will be remanded to the Benefits Bureau for an initial investigation and determination regarding claimant's June 7, 2020 claim year and her June 6, 2021 claim year. The issue of whether the claimant is making an earnest and active work search and whether a work search warning is appropriate will be remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant's Group Code for her June 7, 2020 claim year is correct will be remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

July 15, 2021
Decision Dated and Mailed

db/kmj