

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BETHANIE A WILSON**  
Claimant

**ABSOLUTE FLAVORS LLC**  
Employer

**APPEAL 22R-UI-03719-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Respondent (4-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On September 8, 2021, employer Absolute Flavors, L.L.C., filed an appeal from the September 2, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant was on a short-term layoff effective March 15, 2020. The parties were properly notified of an initial hearing scheduled at 1:00 p.m. on October 29, 2022. The claimant, Bethanie A. Wilson, did not appear for the hearing. The employer, Absolute Flavors, L.L.C., did not appear for the hearing. Following the administrative law judge issuing a default decision, the employer appealed to the Employment Appeal Board (“EAB”). On February 1, 2022, the EAB remanded this matter for a new hearing.

The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, March 9, 2022. The claimant, Bethanie A. Wilson, participated. The employer, Absolute Flavors, L.L.C., participated through Sherry Warth, Owner. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant able to work and available for work effective March 15, 2020?  
Is the claimant still employed at the same hours and wages?  
Is the claimant totally, partially, or temporarily unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Absolute Flavors, L.L.C., on December 3, 2016. She was hired to work as a part-time bartender, and she held this position throughout her employment.

Initially, claimant worked Monday nights and Saturday nights. Claimant was never guaranteed a certain schedule or a certain number of hours per week. In 2018 or early 2019, the employer changed her hours to just Monday nights, due to business needs. Claimant worked Monday nights from that point forward, until the end of her employment.

On March 17, 2020, the employer's dine-in restaurant and bar closed to the public per orders from Governor Reynolds, due to the COVID-19 pandemic. The employer continued to operate its business for carry-out orders only. However, it had no bartending work available for claimant for approximately two months. Claimant returned to work the week of May 10, 2020. She immediately resumed working one night per week, though her shift was shortened from four hours to three hours.

Claimant separated from employment on or about October 26, 2020, when she quit her part-time position to accept full-time employment with a different employer. That separation has been addressed in the December 3, 2021 (reference 02) unemployment insurance decision that allows benefits and relieves the employer of charges.

During this time, claimant also held a second part-time position at Central Standard. That employment has not yet been examined by Iowa Workforce Development.

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

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed effective March 22, 2020, through the week ending May 9, 2020. Benefits for those weeks are allowed. Benefits for all other weeks are withheld.

Iowa Code § 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 § 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed no services for this employer from March 22, 2020, through the week ending May 9, 2020. She was totally unemployed for those seven weeks and is eligible for benefits for that seven-week period.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into and requested a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. As the claimant worked in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant was not partially unemployed and is not eligible for benefits for the one-week period ending March 21, 2020; or for the twenty-five-week period ending October 31, 2020.

Claimant may have been partially unemployed from her position with her other employer, Central Standard. This matter will be remanded for further investigation of that employment.

**DECISION:**

The September 2, 2021 (reference 01) unemployment insurance decision is modified in favor of the employer/appellant. Claimant was totally unemployed effective March 22, 2020, through the week ending May 9, 2020. Benefits for that period are allowed.

Claimant was neither totally nor partially unemployed from Absolute Flavors, L.L.C., for the one-week period ending March 21, 2020; and for the twenty-five week period effective May 10, 2020, through October 31, 2020. Benefits for those weeks are withheld.

**REMAND:**

The issue of whether claimant is eligible for benefits based on her employment with Central Standard Waukee, L.L.C. (account number 605938) is remanded to the Benefits Bureau for determination and entry of all necessary decisions consistent with that determination.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

March 18, 2022  
Decision Dated and Mailed

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