

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE J DONOHUE
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL 21A-UI-09641-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Kyle J Donohue, the claimant/appellant, filed an appeal from the March 23, 2021, (reference 02) unemployment insurance decision that denied benefits as of January 10, 2021. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2021. Mr. Donohue participated and testified. The employer participated through Drake Cherveney, store manager. Official notice was taken of the administrative record.

ISSUES:

Is Mr. Donohue partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Donohue began working for the employer on February 21, 2019. He works as a part-time cashier/stocker. His hours vary but he usually works about twenty hours per week. He is paid \$7.35 per hour. His weekly unemployment insurance benefit amount is \$108.00.

In January 2021, the employer reduced Mr. Donohue's hours, and the hours of most employees at the store at which he worked, due to slow business. By the end of March 2021, Mr. Donohue's hours were back to the usual twenty or so hours. Mr. Donohue's hours did not change.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Donohue is partially unemployed from January 10, 2021 through January 30, 2021, and from February 14, 2021 through March 13, 2021.

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.

Iowa Code section 96.7(2)a(2)(a) 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.

Mr. Donohue worked less than his regular hours and earned less than his weekly benefit amount plus fifteen dollars from January 10, 2021 through January 30, 2021, and from February 14, 2021 through March 13, 2021. Mr. Donohue is partially unemployed these weeks. Benefits are allowed for these weeks, as long as he is otherwise eligible.

DECISION:

The March 23, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant, Mr. Donohue. Mr. Donohue is partially unemployed from January 10, 2021 through January 30, 2021, and from February 14, 2021 through March 13, 2021. Benefits are allowed for these weeks, as long as he is otherwise eligible.



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July 2, 2021
Decision Dated and Mailed

dz/mh