

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**IMMACULEE SEGLA**  
Claimant

**APPEAL 21A-UI-13327-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**D OF S FOODS INC**  
Employer

**OC: 05/02/21  
Claimant: Respondent (4R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 25, 2021, (reference 01) unemployment insurance decision that allowed benefits due to a short-term layoff. The parties were properly notified of the hearing scheduled for August 20, 2021. Claimant requested the hearing be rescheduled due to her work schedule. A telephone hearing was held on September 21, 2021. Claimant Immaculee Segla participated personally. Employer D of S Foods, Inc. participated through operations supervisor Kris Chamberlain. The administrative law judge took official notice of the administrative file.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective May 2, 2021?  
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: The claimant has been employed part time as a crew member since June 20, 2016.

The claimant currently works for D of S Foods, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. She works an average of 25 hours per week and earns \$11.65 per hour. Claimant is additionally employed full time through Montezuma Mfg. Division of Dieomatic, Inc. Claimant was laid off by her full time employment from May 2, 2021 through June 12, 2021.

Since filing an initial claim, claimant has continued to work her regular hours with D of S Foods, Inc. Her weekly benefit amount is \$512.00. She filed weekly-continued claims for benefits between May 2, 2021 and June 12, 2021 and reported no wages.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is relieved of benefit charges.

Iowa Code § 96.1A(37) 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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the

unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant has other base-period wages and is currently employed part time, claimant is considered partially unemployed. Benefits are allowed provided she is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

#### **DECISION:**

The May 25, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. The account of the current part-time employer (account # 222574) shall not be charged.

**REMAND:**

The issue of whether claimant has properly reported her wages since May 2, 2021 is remanded to the Investigation and Recovery Unit of Iowa Workforce Development for an investigation and decision.



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Stephanie Adkisson  
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September 23, 2021  
Decision Dated and Mailed

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