

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE M SHANNON
Claimant

DIAMOND JO LLC
Employer

APPEAL 21A-UI-07942-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1R)

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Diane Shannon (claimant) appealed an Iowa Workforce Development March 15, 2021, decision (reference 01) that denies benefits based on her continued employment with Diamond Jo (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2021. The claimant participated personally. The employer participated by Matt Maloney, Team Member Service Specialist. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 10, 2017, as a full-time worker. On September 1, 2017, the claimant became a part-time employee with no guarantee of hours. She worked fluctuating hours that fit the business needs of the employer.

The claimant had work-related back surgery on October 29, 2020. She was restricted from working from October 29, 2020, to January 13, 2021. She returned to work on January 16, 2021, and the employer offered her work nine hours per week as a hostess. Prior to her back surgery, the claimant worked approximately nine hours per week as a hostess, cashier and server. The employer reduced employee hours due to the pandemic.

On March 12, 2021, the claimant resigned to take other employment at Medical Associates in Dubuque, Iowa.

REASONING AND CONCLUSIONS OF LAW:

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 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 96.1A, 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 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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). As of January 10, 2021, the claimant was not temporarily or totally unemployed. She was working every week. The question becomes whether she was partially unemployed. The claimant was originally hired as a full-time worker but shortly thereafter became a part-time employee. The employer does not guarantee part-time employees hours. The claimant was working part-time hours until she quit on March 12, 2021. The claimant was still employed in her part-time job at the same hours and wages. She was not partially unemployed. The claimant is not eligible to receive unemployment insurance benefits as of January 10, 2021.

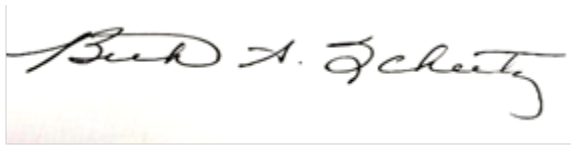
The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The March 15, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 10, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

REMAND:

The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge
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June 9, 2021
Decision Dated and Mailed

bas/kmj