

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRITT X HAWES**  
Claimant

**APPEAL NO. 20A-UI-08085-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF WEST DES MOINES**  
Employer

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

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 6, 2020, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 21, 2020. Claimant participated personally. Employer participated by Missy Brush.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant currently works for City of West Des Moines, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant also has other wages in the base period history. Claimant works consistent part time hours for the City of West Des Moines, and consistent part time hours for West End Salvage.

The City of West Des Moines employed claimant to work at events. Claimant consistently worked events and worked consistent, if varied part time hours for over a year for employer. Employer did not employ claimant for any hours during March and April 2020. In March, employer was working on the facility where claimant worked and in April employer had no events because of Covid.

Beginning May 11, 2020 claimant started working a large number of hours. Claimant has been paid at or around \$17.00 / hr. From the time when she started back working in May, she worked a minimum of 20 hours a week.

It appears that claimant reported earning no wages throughout May although she earned wages well in excess of her weekly benefit amount every week. Claimant received state and federal benefits throughout this period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was temporarily unemployed for the period between her filing of this matter on March 15, 2020 and May 9, 2020.

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 96.19, 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 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 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....

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.

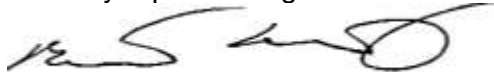
Because the claimant did not work her established part time job with City of West Des Moines during the period between March 15, 2020 and May 9, 2020, and she additionally did not work her other part time job during that period, benefits are allowed for that period. As claimant was working her established hours during the period after May 9, 2020 benefits are not allowed after that date.

This matter will be remanded to the benefits bureau for further investigation into this matter, as it appears claimant did not correctly state wages earned after the date of May 9, 2020.

**DECISION:**

The July 6, 2020, reference 02, decision is modified in favor of claimant. The claimant was temporarily unemployed for the period between March 15, 2020 and May 9, 2020 and benefits are allowed, provided claimant is otherwise eligible. Claimant is not partially unemployed after that period.

This matter is remanded to the benefits bureau for investigation as to whether claimant has correctly reported wages earned after the date of May 9, 2020.



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Blair A. Bennett  
Administrative Law Judge

August 26, 2020  
Decision Dated and Mailed

bab/sam