

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANESSA D TOWNSEND**  
Claimant

**APPEAL 21A-UI-18083-JC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 05/16/21**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
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:**

The employer/appellant (Kinseth Hotel Corporation) filed an appeal from the August 5, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2021. The claimant/respondent (Danessa D. Townsend) participated personally. The employer was represented by Lesley Buhler, hearing representative. Debra Kendall testified. Employer Exhibits 1-9 were admitted. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed for the period of May 16, 2021 through May 29, 2021?

Was the claimant able and available for work during this period?

Was the claimant working under the same hours and wages for which she was hired?

Is the employer’s account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for unemployment insurance benefits with an effective date of May 16, 2021. She made weekly continued claims for the two week period ending May 29, 2021.

Claimant is employed as a part-time housekeeper, earning \$10.00 per hour. Claimant’s hours vary based upon hotel occupancy. For each week claimant filed her claim for benefits, she worked for the employer. Claimant was not guaranteed set hours or schedules and claimant agreed to that arrangement at hire.

Claimant worked 13.17 hours for the week ending May 21, 2021 and 19.84 hours for the week ending May 29, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for benefits between May 16, 2021 and May 29, 2021.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 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", subparagraph (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. 871-24.23(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.

Claimant in this case was hired for only part-time hours and was not guaranteed shifts or hours, and that her hours would vary based upon business needs. The claimant performed some work for both weeks she applied for unemployment insurance benefits, although the administrative law judge recognizes the claimant may have wanted more shifts. Therefore, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that guaranteed shifts or work may not be regularly available. Thus, since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated August 5, 2021, (reference 01) is REVERSED. The claimant is not considered unemployed effective May 16, 2021. Benefits are denied.

**REMAND:**

The issue of the claimant's unrecorded wages in conjunction with her weekly continued claims is remanded to the Benefits Bureau for an adjustment.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

October 13, 2021  
Decision Dated and Mailed

jlb/mh

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>