

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MADLINE C DEMOULLY**  
Claimant

**APPEAL 20A-UI-12589-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEXAS ROADHOUSE HOLDINGS INC**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (3-R)**

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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 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:**

Madeline Demouilly filed an appeal from the September 29, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the determination that the claimant was not available for work due to being out of town. The parties were properly notified of the hearing. A telephone hearing was held on November 23, 2020. The claimant participated. The employer did not register a phone number and did not participate. Claimant's Exhibit A was admitted. 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 March 22, 2020?  
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 was employed part time as a host and server at Texas Roadhouse from May 2016 until this employment ended on June 13, 2020, when she voluntarily quit. Beginning in August 2018, the claimant worked at the Coralville location and worked an average 20 hours per week earning \$4.35 per hour plus tips. Her hours varied from week to week due to the claimant's school schedule.

In mid-March 2020, the employer's dining room closed due to Governor Reynolds's executive order. The employer remained open for take-out orders. The employer had hours available for employees, but the hours were reduced due to the dining room closure. The claimant returned to her parents' home in Dubuque, Iowa on March 13, 2020 to quarantine. She informed the employer that she was available for work but she was living one and a half hours away from the restaurant.

On May 20, 2020, the employer reopened its dining room. At that time, the claimant returned to the Coralville area. The claimant asked the employer to schedule her for weekends only because she was in the process of moving to Dubuque. The employer agreed. The claimant worked between 12 and 16 hours a week between May 20 and June 13, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed but was totally unemployed and not able to and available for work. Benefits are denied.

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), (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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). The first question is whether the claimant was able to and available for work from March 22 through May 19, 2020. Iowa Admin. Code r. 871-24.23(25) provides that a claimant is disqualified for being unavailable for work if the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market. The claimant voluntarily removed herself from the geographic area during this period so she was unavailable for work.

The next question is whether the claimant was partially unemployed between May 20 and June 13, 2020. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into and requested a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated, as was the expectation when she was hired. As the claimant worked each weekend in a part-time job in the same hours and wages contemplated at hire, the claimant was not partially unemployed and is not eligible for benefits for the period between May 20 and June 13, 2020.

Total unemployment occurs when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant did not receive wages or perform services between March 22 and May 19, 2020. She was totally unemployed during this period.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The September 29, 2020, reference 01, unemployment insurance decision is modified in favor of the employer. The claimant was not able to work and available for work effective March 22, 2020. 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 whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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Stephanie Adkisson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

December 7, 2020  
Decision Dated and Mailed

sa/scn

**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 currently 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.