

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOY SHELDON
Claimant

APPEAL NO. 21A-UI-14694-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MC SOIFER'S INC
Employer

**OC: 03/28/21
Claimant: Appellant (1)**

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 June 22, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 23, 2021. Claimant participated personally. Employer participated by Shawn Sorenson and Pam Schmidke. Claimant failed to respond to the hearing notice and did not participate.

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 Mc Soifer's, a base period employer, part time, although for the period of April 3, 2021 until June 12, 2021 claimant was receiving fewer hours than she'd historically received. Employer was undergoing renovations of the restaurant, and claimant specialized in walk-up orders and not the faster pace of drive through orders. As the eat-in area was closed, claimant was not able to get her normal number of hours per week during construction. Claimant showed consistent wages of less than half the weekly wages she'd received prior to the pandemic and prior to the eat in facility being closed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period of March 28, 2021 through June 12, 2021.

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.

Because the claimant was working fewer part time hours than she'd established for employer prior to construction, claimant is considered partially unemployed. Benefits are allowed.

DECISION:

The June 22, 2021, reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

August 27, 2021
Decision Dated and Mailed

bab/mh