

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HALEY E BARKER
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-08142-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant, Haley E. Barker, filed an appeal from the July 1, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2020. The claimant participated personally. Bob Eash participated as a witness for the claimant. The employer, Kwik Trip Inc., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

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:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer since 2014. She was hired as a part-time guest services associate with no guarantee of hours, but generally works an average of 21-28 hours per week, depending on business needs. The claimant agreed to the arrangement at hire.

The claimant has two small children. Her boyfriend’s grandparents (Mr. Eash and his wife) are the primary childcare providers for the children. The claimant filed her claim for unemployment insurance benefits effective April 26, 2020 because Mr. Eash and his wife were unable to care for the children due to being high-risk if exposed to COVID-19.

The claimant continued to work for the employer each week between April 26, 2020 through July 31, 2020, but only worked two days per week, due to a lack of childcare. Usually the

claimant works at least three shifts. The employer has had work available each week to the claimant since she filed a claim for benefits. The claimant does not work for any other employer at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective April 26, 2020.

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 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 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 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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.

For an individual to be eligible to receive benefits, she must be able to work and available for work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The administrative law judge recognizes the claimant has filed her current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. However, the claimant informed the employer she was unable to work all available shifts or her usual scheduled due to a lack of childcare.

Further, because the claimant asked to work only part-time hours and was not guaranteed full-time hours, 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 full-time work will 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.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The unemployment insurance decision dated July 1, 2020, (reference 01) is affirmed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, she should contact Iowa Workforce Development.



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

August 26, 2020
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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.