

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LOAN T LE
Claimant

THE WARRIOR HOTEL, TWO
Employer

APPEAL 23A-UI-05949-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/23
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The Warrior Hotel, Two, the employer/appellant,¹ filed an appeal from the Iowa Workforce Development June 6, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Le REGULAR (state) UI benefits as of April 30, 2023 because IWD concluded she is still employed part-time or working on-call whenever work is available. The decision also informs the employer that its account will be charged since Ms. Le is not working in the same way she had been. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Le. The undersigned administrative law judge held a telephone hearing on June 29, 2023. The employer participated through Amanda DeBacker, human resources director. Ms. Le did not participate in the hearing. The undersigned took official notice of the administrative record.

ISSUES:

Is Ms. Le able to and available for work as of April 30, 2023?
Is Ms. Le totally, partially or temporarily unemployed as of April 30, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Ms. Le began working for the employer, a non-base period employer, on August 11, 2021. She worked as a full-time nail technician. The employer paid her \$17.00 per hour plus tips and she had a set schedule.

On, or about, April 21, 2023, Ms. Le asked the employer to reduce her hours because she had another job. The employer did so. Ms. Le filed her initial UI claim effective April 30, 2023. IWD set her weekly UI benefit amount at \$345.00.

A few weeks later, Ms. Le asked the employer to reduce her hours again because of her other job. The employer did so. The employer had full-time work available for Ms. Le but reduced her hours at her request. On June 13, 2023, Ms. Le's employment ended with this employer. IWD has not investigated or issued a decision on Ms. Le's eligibility for UI benefits based on how her job ended with this employer.

¹ Appellant is the person or employer who filed the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Le was still employed in her job as of May 30, 2023 in the same way she had been before she filed her UI claim, and she is not partially unemployed.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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 Code section 96.7(2)a(2)(a) 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.

A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.² To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."³ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁴

In this case, the employer hired Ms. Le as a full-time nail technician. The employer continued to offer Ms. Le the same employment, but she asked the employer to reduce her hours because of her other job. The reduction in Ms. Le's hours at her request does not mean that her job has changed. Ms. Le was still employed in her job as of April 30, 2023 in the same way she had been before she filed her UI claim. UI benefits are denied.

DECISION:

The June 6, 2023 (reference 01) UI decision is REVERSED. Ms. Le is still employed in her job in the same way she had been before April 30, 2023. UI benefits are denied.

REMAND:

The issue of Ms. Le's eligibility for UI benefits based on how her job ended with this employer is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



Daniel Zeno
Administrative Law Judge

June 30, 2023
Decision Dated and Mailed

rvs

² Iowa Admin. Code r. 871-24.22.

³ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁴ *Sierra* at 723.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.