

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOAN M JAKOUBEK**  
Claimant

**712 LLC**  
Employer

**APPEAL 21A-UI-16026-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

Joan M Jakoubek, the claimant/appellant, filed an appeal from the July 7, 2021, (reference 02) unemployment insurance decision that denied benefits as March 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2021. Ms. Jakoubek participated and testified. The employer participated did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is Ms. Jakoubek able to and available for work?  
Is Ms. Jakoubek on a leave of absence?  
Is Ms. Jakoubek temporarily or partially unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Jakoubek began working for the employer, a restaurant and a base period employer, on January 25, 2017. She works as part-time server. She works the lunch shift on only Mondays and Tuesdays. She is paid \$8.00 per hour plus tips. Ms. Jakoubek also works at 801 Chophouse, a restaurant, in Nebraska. She works as a part-time server. She is paid \$2.13 per hour plus tips.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, both restaurants closed to in-person dining. Ms. Jakoubek returned to work at this employer in October 2020 at her same hours and same pay. Ms. Jakoubek returned to work at 801 Chophouse in November 2020 at her same pay, but 801 Chophouse offered her reduced hours due to the pandemic. Ms. Jakoubek returned to her usual hours at 801 Chophouse in June 2021.

Ms. Jakoubek had a medical procedure scheduled for Friday, April 9, 2021. Ms. Jakoubek expected to have limited work availability for about a week after the procedure. On Monday, April 5, Ms. Jakoubek became ill. She was not able to work for the rest of the week. Due to her illness, Ms. Jakoubek rescheduled her April 9 procedure. On Monday, April 12, told the employer that she was ready to work again, and she returned to work.

The administrative record (DBRO screen) shows that Ms. Jakoubek reported \$0.00 in wages for nine of the eleven weeks from March 14, 2021 through May 29, 2021.

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

For the reasons that follow, the administrative law judge concludes Ms. Jakoubek is partially unemployment from March 14, 2021, the effective date of her claim, through April 4, 2021, not able to work from April 5, 2021 through April 11, 2021, and partially unemployed from April 12, 2021 through May 29, 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 § 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(1), (10), and (26) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(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) 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.

In this case, Ms. Jakoubek is partially unemployed from March 14, 2021 through April 4, 2021, and again from April 12, 2021 through May 29, 2021. Her hours were reduced due to the COVID-19 pandemic and she earned less than her weekly benefit amount plus fifteen dollars. Partial benefits are allowed during these weeks, as long as she is otherwise eligible.

Ms. Jakoubek was ill and not able to work due to her illness from April 5, 2021 through April 11, 2021. Ms. Jakoubek has not established that she is able to work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Ms. Jakoubek is not eligible for regular, state-funded unemployment insurance benefits from April 5, 2021 through April 11, 2021.

Since the employer in this matter continuously offered Ms. Jakoubek the same wages and wages as of October 2020, no benefit charges shall be made to its account from March 14, 2021 through May 29, 2021. This aligns with the Department's position to not charge employers

for claims made by employees due to COVID-19 related unemployment if the claim was filed before June 12, 2021. Ms. Jakoubek's claim was filed effective March 14, 2021.

**DECISION:**

The July 7, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant, Ms. Jakoubek. Ms. Jakoubek is partially unemployed from March 14, 2021 through April 4, 2021, and again from April 12, 2021 through May 29, 2021. Benefits are allowed during these weeks. The employer is relieved of benefit charges during these weeks.

Ms. Jakoubek is not able to work from April 5, 2021 through April 11, 2021. Benefits are denied during this week.

**REMAND:**

The matter is remanded to the Benefits or Integrity Bureau of Iowa Workforce Development for investigation and a decision on whether Ms. Jakoubek failed to report wages between March 14, 2021 and May 29, 2021.



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Daniel Zeno  
Administrative Law Judge  
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September 16, 2021  
Decision Dated and Mailed

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