

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JANAE FINNESTAD
Claimant

MASTER OF NONE LLC
Employer

APPEAL 21A-UI-09239-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Respondent (2R)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the March 16, 2021 (reference 01) unemployment insurance decision that granted benefits based upon the conclusion she was able to and available for work for work effective February 7, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on June 16, 2021, at 9:00 a.m. The claimant participated. The employer participated through Justin Berkley. Exhibit 1 was received into the record. Official notice was taken of the administrative record.

ISSUE:

Was the claimant able to work and available for work effective February 7, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Janae Finnestad, started working as a bartender / server for the employer, Master of None, LLC, on July 7, 2020. The claimant worked an average of 30 hours per week. The claimant's hours were variable. Her hourly rate of pay was \$4.35.

The employer provided a copy of its Covid19 infection spread mitigation policy. (Exhibit 1) If an employee has been exposed to someone who has tested positive for Covid19, then they are to remain away from work until they undergo a test and receive a negative test result.

The claimant worked at Birchwood Wellness LLC at the same time. The claimant received \$750.00 from her employer each week she made weekly claims. The claimant did not report these earnings because she did not believe she needed to.

On February 7, 2021, the claimant made an effective claim for unemployment benefits. Her weekly benefit amount is \$531.00. The claimant's base period spans from the fourth quarter of

2019 to the third quarter of 2020. The employer and Altus Brewing Company LLC paid the claimant insured wages in the third quarter of 2020.

On February 12, 2021, the claimant's roommate and coworker, Chance Ingles, tested positive for Covid19. The claimant obtained a Covid19 test the same day. She received a negative test result regarding her test. That same day, Manager Molly Giegerich instructed the claimant to remain away from work for 14 days or 10 days from her negative test result. The administrative record DBRO states the claimant earned \$500.00 for the week ending February 13, 2021.

The administrative record DBRO states the claimant earned zero dollars for the week ending February 20, 2021.

The administrative record DBRO states the claimant earned zero dollars for the week ending February 27, 2021.

On March 2, 2021, the claimant returned to work. The claimant did not ever experience symptoms of Covid19. Work was available for the claimant had she not been subject to the employer's Covid19 infection mitigation practice.

The claimant separated from employment with the employer on April 11, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed effective February 7, 2021 because she earned beyond her weekly benefit amount plus fifteen dollars for each week she made weekly claims. The remaining issues are moot.

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 Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An 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.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Code section 96.7(2)a(2) 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.

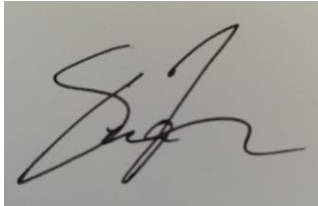
The claimant was not partially unemployed for any of the weeks she made weekly claims because the earnings she received solely from Birchwood Wellness LLC (\$750) exceed her weekly benefit amount of \$531.00 plus \$15.00, or \$536.00. Claimants are required to report all insured wages received for each weekly claim they make. Since the claimant was not partially, temporarily or totally unemployed, the remaining issues are moot. Benefits are denied.

DECISION:

The March 16, 2021 (reference 01) unemployment insurance decision is reversed. The claimant was not partially, temporarily, or totally unemployed effective February 7, 2021. Benefits are denied.

REMAND:

The administrative law judge remands to the Benefits Bureau the issues relating to correcting the reported earnings in DBRO and to determine if her separation on April 11, 2021 is disqualifying.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 1, 2021
Decision Dated and Mailed

smn/lj