

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALICIA C COLE

Claimant

THRIVE TOGETHER LLC

Employer

APPEAL NO. 21A-UI-13658-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21

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 May 26, 2021, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 11, 2021. Claimant participated personally.

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 Thrive Together, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant's hours were eliminated early on during Covid, and reduced after claimant was brought back to work until recently when claimant stated she's begun to get at or near the same hours she'd previously received.

Employer reported wages for claimant at or around \$6,000.00 a quarter prior to Covid. Employer showed wages of claimant of \$5,899.00 for the second quarter of 2021. Claimant filed this original claim on March 14, 2021 so claimant only filed for two weeks prior to the second quarter of 2021. Claimant continued filing throughout the second quarter, but wages shown do not coincide with quarterly wages reported by employer.

Prior to the second quarter of 2020 claimant had a massive drop-off in hours worked and income for Covid-related reasons.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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

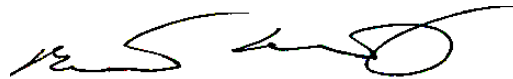
workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Because the employer reported wages in the second quarter of 2021 that were commensurate with wages reported throughout 2019, claimant is not considered partially unemployed. Benefits are denied.

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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The May 26, 2021, reference 02, decision is affirmed. The claimant is not partially unemployed after filing a second year original claim and benefits are denied.



Blair A. Bennett
Administrative Law Judge

August 17, 2021
Decision Dated and Mailed

bab/scn