

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KRISTINA P JOHNSON**  
Claimant

**KHINDA LLC**  
Employer

**APPEAL NO. 20A-UI-09355-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Respondent (2/R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 31, 2020, reference 01, decision that allowed benefits to the claimant effective March 29, 2020, provided she met all other eligibility requirements, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same employment as existed during the base period. After due notice was issued, a hearing was held on September 22, 2020. Happy Kaur represented the employer. Claimant Kristina Johnson initially participated in the hearing, but abruptly terminated her participation during her testimony after it became apparent that she had misrepresented her wages to Iowa Workforce Development and after she stated, "I don't care." The administrative law judge made at least three attempts to reach Ms. Johnson to afford her the opportunity to continue in the hearing. Ms. Johnson did not answer and her voice mailbox was full. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning March 29, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 29, 2020.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristina Johnson established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set her weekly benefit amount at \$326.00. By the time of the September 22, 2020 appeal hearing, Ms. Johnson had made weekly claims for the period beginning March 29, 2020 through the benefit week that ended September 12, 2020. Ms. Johnson has received benefits for each claim week.

At the time Ms. Johnson established her claim for benefits, she was employed by Khinda, L.L.C., doing business as Quick Stop. That employer operates a convenience store in Burlington. Happy Kaur is the business owner. Ms. Johnson began her Quick Stop employment in 2018 and worked as a part-time cashier until she separated from the employment on June 7, 2020. During the last year of the employment, Ms. Johnson's wage at Quick Stop was \$9.00 an hour. Ms. Johnson consistently worked 25 to 27 hours per week at Quick Stop until she separated from the employer. The employer did not decrease available work hours and did not decrease Ms. Johnson's wages. Ms. Johnson's wages from Quick Stop consistently totaled at least \$225.00 per week. After Ms. Johnson established the claim for benefits that was effective March 29, 2020, she continued to receive these same wages from Quick Stop for her period beginning March 29, 2020 through the benefit week that ended June 6, 2020. However, Ms. Johnson did not report the Quick Stop wages for any of the claim weeks between March 29, 2020 and June 6, 2020. Instead, Ms. Johnson reported only wages from her other employment at Subway. The combined weekly wages from the two employments consistently exceeded Ms. Johnson's \$326.00 by substantially more than \$15.00. Between the two employments, Ms. Johnson was working the equivalent of full-time hours or more than full-time hours.

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

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(2) provides, in pertinent part:

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.

(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.

Iowa Admin. Code r. 871-24.23(23) and (26) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(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 96.19(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.

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

From the time that Ms. Johnson established the original claim that was effective March 29, 2020 through the benefit week that ended June 6, 2020, Ms. Johnson was working the equivalent of full-time hours or more than full-time hours in the two employments. Ms. Johnson was effectively removed from the broader labor market during that period, cannot be deemed unemployed for that period, and did not meet the availability requirement for that period. At no time between the March 29, 2020 original claim date and the benefit week that ended June 6, 2020 was Ms. Johnson partially unemployed from the Khinda, L.L.C./Quick Stop employment. Ms. Johnson is not eligible for benefits for the period of March 29, 2020 through June 6, 2020. The employer account of Khinda, L.L.C. will not be charged for benefits paid to Ms. Johnson for the period of March 29, 2020 through June 6, 2020.

This matter will be remanded to the Investigations & Recovery Unit for investigation into and a determination of whether Ms. Johnson committed fraud by consistently omitting her Khinda, L.L.C./Quick Stop wages from her unemployment insurance claim during the period of March 29, 2020 through June 6, 2020 and for entry of overpayment decisions regarding the regular benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits Ms. Johnson received for the period of March 29, 2020 through June 6, 2020. The Investigations & Recovery Unit may also wish to investigate whether the claimant's wage reports for the period beginning June 7, 2020 through the most recent benefit week are accurate.

This matter will be remanded to the Benefits Bureau for investigation of and entry of a decision regarding the separation from Khinda, L.L.C./Quick Stop that occurred on or about June 7, 2020.

The matter will be remanded to the Benefits Bureau for consideration of the availability issues and partial unemployment issue for the period beginning June 7, 2020 through the most recent benefit week.

**DECISION:**

The July 31, 2020, reference 01, is reversed. From March 29, 2020 through the benefit week that ended June 6, 2020, the claimant was working the equivalent of full-time hours or more than full-time hours in the two employments, was effectively removed from the broader labor market, was not unemployed within the meaning of the law, and therefore did not meet the availability requirement. The claimant was not partially unemployed from March 29 2020 through the benefit week that ended June 6, 2020. The claimant is not eligible for benefits for the period of March 29, 2020 through June 6, 2020 and benefits are denied for that period.

This matter is remanded to the Investigations & Recovery Unit for investigation into and a determination of whether the claimant committed fraud by consistently omitting her Khinda, L.L.C./Quick Stop wages from her unemployment insurance claim during the period of March 29, 2020 through June 6, 2020 and for entry of overpayment decisions regarding the regular benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits the claimant received for the period of March 29, 2020 through June 6, 2020. The Investigations & Recovery Unit may also wish to investigate whether the claimant's wage reports for the period beginning June 7, 2020 through the most recent benefit week are accurate.

This matter is remanded to the Benefits Bureau for investigation of and entry of a decision regarding the separation from Khinda, L.L.C./Quick Stop that occurred on or about June 7, 2020.

The matter is remanded to the Benefits Bureau for consideration of the availability issues and partial unemployment issue for the period beginning June 7, 2020 through the most recent benefit week.



---

James E. Timberland  
Administrative Law Judge

September 25, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**