

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET L SHAFER
Claimant

STRAWBERRY PATCH LTD INC
Employer

APPEAL 20R-UI-14398-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Janet L. Shafer, filed an appeal from the July 21, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first hearing was held, and claimant’s appeal was deemed untimely. See 20A-UI-0695-DG-T. Claimant appealed the decision to the Employment Appeal Board (EAB) who reversed the administrative law judge’s hearing decision, and remanded the matter for a new hearing on the merits of the case.

After proper notice, a telephone hearing was held on January 11, 2021. The claimant participated. The employer, Strawberry Patch LTD Inc., participated through Jeffrey Kirschbaum. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to work and available for work effective April 19, 2020?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established her claim with an effective date of April 5, 2020. The undisputed evidence is claimant was laid off due to a lack of work from April 5-18, 2020.

Claimant has worked for this employer since October 2016 as a part-time staff member, earning \$10.50 per hour. Claimant sets her schedule and employer allows her to do so. Claimant generally works two or three days a week, for up to twenty hours. Claimant is not guaranteed a set number of hours per week. Claimant agreed to this arrangement at hire.

Effective April 19, 2020, employer had work available for claimant. For a period of two weeks, claimant did not work. She was concerned about exposure to COVID-19 and bringing it home to her husband, who has health issues that put him at high risk. She also was transporting him to medical appointments during this period. Employer allowed claimant not to work, and to determine when she wanted to return.

Claimant returned to work during the week of May 3, 2020. She forgot to report her wages earned that week when making her weekly continued claim. Claimant continues to work part-time under the same hours and agreement at hire. Employer continues to have work available to claimant under these conditions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 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", subparagraph (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. 871-24.23(16) and Iowa Admin. Code r. 871-24.23(26) provide:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the period of April 18, 2020 through May 2, 2020, employer had work available to claimant but she chose not to work due to family matters related to exposing her husband to COVID-19 and due to the need to transport him to medical appointments. Claimant's self-restriction of hours led to claimant not performing work for this period. Benefits are denied. See Iowa Admin. Code r. 871-24.23(16).

Effective May 3, 2020, because the claimant asked to work only part-time hours and was not guaranteed set hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that a set number of hours to work will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed. Benefits are denied. See Iowa Admin. Code r. 871-24.23(26).

The issue of claimant's unrecorded wages for the week of May 3-9, 2020 is remanded to the Benefits Bureau for an adjustment.

DECISION:

The unemployment insurance decision dated July 21, 2020, (reference 01) is AFFIRMED. The claimant is not able and available for work effective April 19, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's unrecorded wages for the week of May 3-9, 2020 is remanded to the Benefits Bureau for an adjustment.

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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations 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.** More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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January 28, 2021
Decision Dated and Mailed

jlb/mh