

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLEE J MERRITTS
Claimant

DEBRISTECH LLC
Employer

APPEAL 21A-UI-09388-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

On April 2, 2021, the claimant filed an appeal from the March 30, 2021, (reference 06) unemployment insurance decision that denied benefits based on a finding the claimant was not able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2021. Claimant Kylee Merritts participated. Employer Debristech, LLC participated through payroll manager Tony Williamson and project manager Bobby Odom. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 30, 2020. Claimant worked for employer as a full-time monitor until February 6, 2021, when she was separated from her employment. Claimant earned \$12.00 per hour.

On February 14, 2021, claimant became ill and tested positive for COVID-19. She remained off from work due to her illness and self-quarantine. She returned to work on January 30, 2021. Claimant worked the week of January 31, 2021. Claimant worked 19.6 hours the week of January 31, 2021, because employer had no additional work available to her. Claimant had no barriers to working after returning to work from her quarantine. The last day claimant worked for employer was February 6, 2021. At that time she was separated from her employment.

Claimant filed weekly claims for benefits for three weeks ending February 6, 2021. She reported no earnings the week ending January 17, 2021, reported \$80.00 for the week ending January 30, 2021, and reported \$90.00 for the week ending February 6, 2021.

There has been no initial investigation or decision regarding the issue of separation and whether claimant was able to and available for work after her separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work between January 17, 2021 and January 30, 2021. Claimant was partially unemployed during the week ending February 6, 2021, and is eligible for benefits during that period.

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 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. 871-24.23(10) provides:

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

(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.

Here, claimant was on a leave of absence due to contracting COVID-19. Claimant has not established she is able to and available for work from January 17, 2021, through January 30, 2021, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits for the two-week period ending January 30, 2021.

The next issue is whether claimant was partially unemployed during the week ending February 6, 2021. Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been permanently separated from an employer, whereas, an individual who is temporarily unemployed has not been permanently separated from employment. To be partially unemployed, an individual must be working less than their regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.*

Claimant reported she earned wages in the amount of \$90.00 for the week ending February 6, 2021. However, claimant worked 19.6 hours and earns \$12.00 per hour, so she earned \$235.20 in gross wages during that week. In order to be eligible for benefits she would need to earn less than \$253.00, her weekly benefit amount plus fifteen dollars. Here, claimant earned less than \$253.00 for the week ending February 6, 2021, and benefits are allowed during that week.

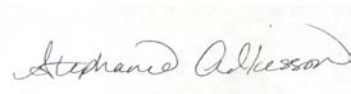
The issues of claimant's separation from employment on February 6, 2021, and whether claimant is able to and available for work after the separation are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The March 30, 2021, (reference 06) unemployment insurance decision is modified. The claimant is not available for work for the week ending January 23 and January 30, 2021, and benefits are denied during this period.

REMAND:

The issues of separation from employment and whether claimant is able to and available for work after the separation are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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June 30, 2021
Decision Dated and Mailed

sa/scn