

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALICIA BAKER
Claimant

APPEAL 21A-UI-08563-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 05/17/20
Claimant: Respondent (2R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the March 16, 2021, (reference 03) unemployment insurance decision that allowed benefits effective February 14, 2021. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2021. Claimant Alicia Baker did not register for the hearing and did not participate. Employer Seventh Avenue, Inc. participated through human resources assistant manager Kyle Rice. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective February 14, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established an original claim for benefits that was effective May 17, 2020. Claimant reactivated the claim effective February 14, 2021. Claimant's weekly benefit amount is \$289.00. Claimant has not made any weekly claims and has not received any benefits since reactivating the claim effective February 14, 2021.

Claimant last worked for employer on February 12, 2021. The claimant was a part-time QA inspector. Claimant was a no-call/no-show for her shifts on February 23 and 24, 2021, and did not attempt to return to the employment. On March 1, 2021, the employer emailed a letter to the claimant in which the employer deemed the claimant to have abandoned the employment. There was no further contact between the parties.

There has been no initial investigation or decision regarding the issue of separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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 96.7(2)a(2)(a), (b), and (c) 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.

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", 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".

Claimant did not participate in the appeal hearing and did not present any evidence to meet her burden of proving that she was able to work and available for work at the time she reactivated her claim effective February 14, 2021. Nor has she presented any evidence to indicate she was totally, temporarily or partially unemployed at the time she reactivated the claim for benefits effective February 14, 2021. The evidence indicates that claimant separated from employer in February 2021 and has had no further employment with employer. Claimant has not been temporarily or partially unemployed from employer since she reactivated the claim effective February 14, 2021. As such, benefits are denied effective February 14.

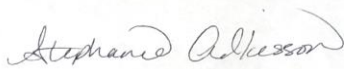
The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The March 16, 2021, (reference 03) unemployment insurance decision is reversed. Claimant has not demonstrated that she was able to work and available for work effective February 14, 2021. Claimant was not temporarily or partially unemployed effective February 14, 2021. Benefits are denied effective February 14, 2021.

REMAND:

The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
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s

June 22, 2021
Decision Dated and Mailed

sa/mh