

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIBEL PERALTA**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 20A-UI-07438-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The employer filed an appeal on behalf of the claimant from the June 26, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was working the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on August 7, 2020. The claimant, Maribel Peralta, participated personally. The employer, West Liberty Foods LLC, participated through witness Monica Dyar. The administrative law judge took official notice of the claimant's unemployment insurance benefits records, including the fact-finding documents.

**ISSUES:**

Is the claimant able to work and available for work?  
Is the claimant eligible for total or partial unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant remains employed full-time with this employer as a quality assurance technician. She has worked there since 2005 as a full-time employee. Claimant was temporary laid off due to lack of work. Claimant filed her initial claim for unemployment insurance benefits effective April 5, 2020. She was laid off from April 7, 2020 through May 10, 2020. She filed weekly-continued claims for benefits from April 5, 2020 through May 9, 2020. She was able to and available for work if work would have been available to her. The employer contends that the layoff was due to lack of orders because of the COVID 19 pandemic.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

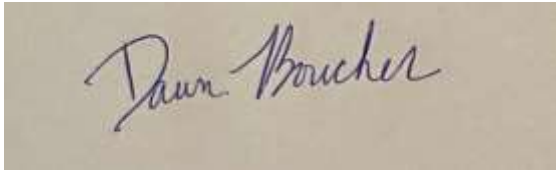
The credible evidence establishes that the claimant was partially unemployed for the first week she filed a weekly-continued claim for benefits and then temporarily unemployed due to a lack of work for the remaining weekly-continued claims for benefits that she filed. As such, benefits are allowed effective April 5, 2020, provided the claimant is otherwise eligible. The chargeability issue will be remanded to the Tax Bureau for an initial investigation and determination.

#### **DECISION:**

The June 26, 2020 (reference 01) unemployment insurance decision is reversed. The claimant is laid off due to lack of work. Benefits are allowed effective April 5, 2020, provided the claimant is otherwise eligible.

**REMAND:**

The chargeability issue delineated in the findings of fact of whether the employer's account may be charged for benefits paid due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of allocation of charges.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style and is positioned above a horizontal line.

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Dawn Boucher  
Administrative Law Judge

August 14, 2020  
Decision Dated and Mailed

db/sam