

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBORA A CORNWELL
Claimant

APPEAL NO. 21A-UI-09299-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARKING INC
Employer

OC: 11/29/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Debora Cornwell, filed a timely appeal from the March 18, 2021, reference 01, decision that denied benefits effective November 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed from Parking, Inc. within the meaning of the law. After due notice was issued, a hearing was held on June 17, 2021. Claimant participated. Will Hays represented the employer. There were five appeal numbers set for a consolidated hearing: 21A-UI-09299-JTT, 21A-UI-09300-JTT, 21A-UI-09301-JTT, 21A-UI-09303-JTT and 21A-UI-09304-JTT. Exhibits A through J were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, NMRO, WAGE-A, the December 31, 2019 (reference 02, o.c. 11/29/20) decision and associated fact-finding materials, the January 2, 2020 (reference 03, o.c. 11/29/20) decision and associated fact-finding materials, and the reference 01 (o.c. 11/29/20) fact-finding materials.

ISSUES:

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

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

Whether this employer's account may be charged for benefits for the period beginning November 29, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective November 29, 2020. Iowa Workforce Development set the weekly benefit amount at \$302.00. The claimant made weekly claims for each of the weeks between November 29, 2020 and April 17, 2021. For the week that ended February 20, 2021 and the week that ended April 3, 2021, the claimant reported wages that exceeded her weekly benefit amount by more than \$15.00. For the remainder of the weeks between November 29, 2020 and April 17, 2021, the claimant reported wages less than her weekly benefit amount. Throughout the period of November 29, 2020 through April 17,

2021, the claimant continued to be employed by Parking, Inc. under the same hours and wages as existed earlier in the employment and during the base period.

The claimant established the November 29, 2020 original claim based on concerns with a decrease in the amount of work the claimant's other employer, Kinseth Hotel Corporation, had for her. On January 4, 2021, an Iowa Workforce Development entered a reference 02 decision that allowed benefits, effective November 29, 2020, as long as she met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but not receiving the same employment from Kinseth as in the base period.

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:

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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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

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

(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 96.1A(37) 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 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).

The claimant was not partially unemployed from the Parking, Inc. at any point between November 29, 2020 and April 17, 2021. Throughout that period, Parking Inc. continued to have the same work for the claimant as in the original contract of hire and earlier in the employment. The fact that the claimant was still employed with Parking, Inc. under the same conditions does not prevent the claimant from meeting the availability requirements, provided the claimant meets all other eligibility requirements.

DECISION:

The March 18, 2021, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant was not partially unemployed from Parking, Inc. at any point between November 29, 2020 and April 17, 2021. The fact that the claimant was still employed with Parking, Inc. under the same conditions does not prevent the claimant from meeting the availability requirements, provided the claimant meets all other eligibility requirements.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

September 28, 2021
Decision Dated and Mailed

jet/scn