

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCHAE M SHEPHERD
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-07999-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (5)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On March 25, 2021, the claimant, Schae M. Shepherd, filed an appeal from the March 22, 2021 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in the contract of hire and was therefore ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Tuesday, June 1, 2021. The claimant, Schae M. Shepherd, participated. The employer, Tyson Fresh Meats, Inc., participated through Lori Direnzo, Human Resource Administrator. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a cryovac operator, from November 16, 2020 until February 13, 2021, when quit to accept other employment. Claimant commenced full-time employment with John Deere effective Monday, February 15, 2021. She stopped filing for unemployment insurance benefits at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was neither totally nor partially unemployed effective February 14, 2021.

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".

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

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

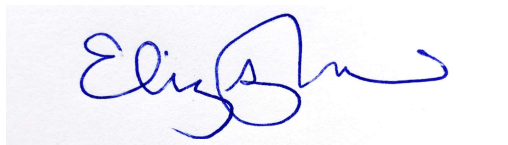
(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.*

In this case, the testimony in the record establishes that claimant was employed full-time with an employer other than this employer effective February 15, 2021. Claimant had severed her employment relationship with this employer in order to accept a position with John Deere, and she began working for John Deere on February 15. Therefore, the administrative law judge finds that claimant was neither totally nor partially unemployed effective February 14, 2021.

DECISION:

The March 22, 2021 (reference 03) unemployment insurance decision is modified with no change in effect. Claimant was neither totally nor partially unemployed effective February 14, 2021. She was employed in a full-time capacity and is therefore not eligible for unemployment insurance benefits.



Elizabeth A. Johnson
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June 14, 2021
Decision Dated and Mailed

lj/kmj