

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EULALIA ARMENTA MEIBORG
Claimant

APPEAL NO. 21A-UI-02346-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/23/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Partial Unemployment
Iowa Administrative Code rule 871-24.2.(1)(g) – Timely Weekly Claim Required

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 22, 2020, reference 01, decision that denied benefits effective August 23, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on March 4, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A through E and G were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period of August 23, 2020 through January 30, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period of August 23, 2020 through January 30, 2021.

Whether the claimant made timely weekly claims.

Whether the employer's account may be charged for benefits for the period of August 23, 2020 through January 30, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by Casey's as a part-time food service employee. The claimant began her employment with Casey's in September 2019. At the start of the employment, the claimant advised the employer that she was available to work seven days a week and that she desired to become a full-time employee. The claimant's hourly wage has at all relevant times been \$12.40 an hour.

The claimant's quarterly wages from the Casey's employment have been as follows:

QUARTER	WAGES
2019/3	264.00
2019/4	2,688.32
2020/1	2,208.51
2020/2	656.23
2020/3	1,822.25
2020/4	3,269.47
2021/1	2,700.38

The quarterly wages reflect that prior to the COVID-19 pandemic, the claimant worked an average of 16 to 17 hours a week. That conclusion is reached by dividing the \$2,688.32 fourth quarter 2020 wages by the 13 weeks in that quarter to arrive at a \$206.79 average weekly wage and dividing the average weekly wage by the \$12.40 hourly wage. The same conclusion is reached by dividing the \$2,208.51 in first quarter wages by the 11 weeks between January 1, 2021 and mid-March 2021, when COVID-19 began to have a substantial economic impact in Iowa.

The claimant had an unexpired unemployment insurance claim year (o.c. 8/25/19) at the time she began the Casey's employment. The claimant established an additional claim for benefits that was effective March 15, 2020, made weekly claims, and received benefits for the period of March 15, 2020 through August 22, 2020, at which time that claim year expired.

The claimant established a new original claim and new claim year that was effective August 23, 2020. Iowa Workforce Development set the weekly benefit amount at \$134.00. The claimant made weekly claims each week between August 23, 2020 and January 30, 2021. For each week, the claimant reported that she was working, was able to work and available for work, and had not refused any work. The claimant reported her weekly wages as indicated in the chart below. The claimant's weekly hours set forth below are derived by dividing the reported wages by the \$12.40 hourly wage.

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>Hours Worked</u>
08/29/20	111.00	8.95
09/05/20	124.00	10.00
09/12/20	148.00	11.93
09/19/20	46.00	3.71
09/26/20	272.00	21.93
10/03/20	285.00	22.98
10/10/20	100.00	8.06
10/17/20	325.00	26.21
10/24/20	210.00	16.90
10/31/20	272.00	21.93
11/07/20	111.00	8.95
11/14/20	111.00	8.95
11/21/20	223.00	17.98
11/28/20	148.00	11.93
12/05/20	173.00	13.95
12/12/20	210.00	16.93
12/19/20	297.00	23.95
12/26/20	136.00	10.97
01/02/21	260.00	20.97

01/09/21	322.00	25.97
01/16/21	223.00	17.98
01/23/21	223.00	17.98
01/30/21	90.00	7.25

The claimant reported wages that exceeded her weekly benefit amount by more than \$15.00 when she made her weekly claims for the weeks that ended September 26, October 3, October 17, October 24, October 31, November 21, December 5, December 12, and December 19, 2020 and for January 2, January 9, January 16 and January 23, 2021.

The claimant reported wages that did not exceed her weekly benefit amount by more than \$15.00 when she made her weekly claims for the weeks that ended August 29, September 5, September 12, September 19, October 10, November 7, November 14, November 28, and December 26, 2020, and the week that ended January 30, 2021.

The claimant made untimely weekly claims for the weeks that ended November 14 through December 12, 2020. The claimant made late claims for each of those weeks on December 22, 2020, when she made her timely weekly claim for the week that ended December 19, 2020.

The claimant made untimely weekly claims for the weeks that ended December 26, 2020, and January 2 and January 9, 2021 on January 22, 2021, when she made her timely weekly claim for the week that ended January 16, 2021.

The claimant was absent from some scheduled shifts during the period of August 23, 2020 through January 30, 2021 due to illness. The claimant was tested three times for COVID-19 and remained off work during these times until she was released to return. The claimant was absent one additional time to care for her sick child.

On Tuesday, October 20, 2020, the claimant was tested for COVID-19, strep throat, and flu. The claimant was at that time suffering bad headaches, gastrointestinal issues and a slight fever. All three tests were negative. The claimant returned to work on Wednesday, October 28, 2020. The claimant's wage reports for those two weeks indicate wages that exceeded the weekly benefit amount by more than \$15.00.

On Sunday, December 20, 2020, the claimant was again tested for COVID-19. The claimant was at that time suffering from a severe long-lasting headache. The claimant notified the employer that she would be absent from her shift. The claimant went to the emergency room, where the claimant was tested for COVID-19. The claimant received the negative test result on Thursday, December 24, 2020 and returned to work at that time. The claimant's wage report indicates that claimant worked slightly less than 11 hours that week.

In mid-December 2020, the claimant changed her availability by eliminating availability on Saturday and Sunday. The claimant had previously been scheduled to work an eight-hour shift on Saturdays. The claimant was able to add an eight-hour shift earlier in the week to replace the Saturday shift.

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(1) and (26) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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 96.19(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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant cannot be deemed partially unemployed during those weeks when her weekly wages exceed her weekly benefit amount by more than \$15.00. Accordingly, the claimant is not eligible for benefits for the weeks that ended September 26, October 3, October 17, October 24, October 31, November 21, December 5, December 12, and December 19, 2020 and January 2, January 9, January 16 and January 23, 2021.

The claimant cannot be deemed available for work or partially unemployed during the week that ended December 26, 2020 because she was absent due to illness for the majority of the week. Additionally, the claimant cannot be eligible for benefits for the week that ended December 26, 2020 because she did not make a timely weekly claim for that week.

This leaves the nine weeks that ended August 29, September 5, September 12, September 19, October 10, November 7, November 14, November 28, 2020, and the week that ended January 30, 2021. However, the claimant cannot be eligible for benefits for the weeks that ended November 14 and November 28, 2020 because she did not make timely weekly claims for those weeks.

This leaves the weeks that ended August 29, September 5, September 12, September 19, October 10, and November 7, 2020, as well as the week that ended January 30, 2021. The weight of the evidence establishes that the claimant was able to work, available for work, and partially unemployed for each of these seven weeks. The claimant is eligible for benefits for

only these seven weeks, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for these seven weeks.

DECISION:

The December 22, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant was able to work, available for work, and partially unemployed during the weeks that ended August 29, September 5, September 12, September 19, October 10, and November 7, 2020, as well as the week that ended January 30, 2021. The claimant is eligible for benefits for only these seven weeks, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for these seven weeks.

The claimant was not partially unemployed during the weeks that ended September 26, October 3, October 17, October 24, October 31, November 21, December 5, December 12, and December 19, 2020 and January 2, January 9, January 16 and January 23, 2021. The claimant is not eligible for benefits for these weeks.

The claimant was neither available for work nor partially unemployed during the week that ended December 26, 2020 and is not eligible for benefits for that week. Additionally, the claimant cannot be eligible for benefits for the week that ended December 26 2020 because she did not make a timely weekly claim for that week.

The claimant is not eligible for benefits for the weeks that ended November 14 and November 28, 2020 because she did not make timely weekly claims for those weeks.



James E. Timberland
Administrative Law Judge

June 21, 2021
Decision Dated and Mailed

jet/scn