

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PERLA R DAVIS
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21A-UI-07679-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (3)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Employment at Same Hours and Wages

STATEMENT OF THE CASE:

On March 18, 2021, the claimant, Perla R. Davis, filed an appeal from the March 9, 2021 (reference 04) 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 not eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephonic hearing was held on Tuesday, May 25, 2021. The claimant, Perla R. Davis, participated. The employer, Casey's Marketing Company, did not register a participant and did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Was claimant Perla R. Davis totally, partially, or temporarily unemployed?
Was claimant Perla R. Davis able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed as a cashier and store clerk with employer Casey's Marketing Company since April 24, 2014. Claimant remains employed with this employer. She is currently a part-time employee.

In March 2020, claimant was a full-time employee. She became ill with symptoms of COVID-19. She called the hospital and described her symptoms, and they advised her to quarantine for 14 days. During that time, claimant's daycare provider was getting nervous about the pandemic and the daycare provider decided to close. Because of this closure, claimant lost her childcare.

Once claimant was able to return to work, she told her boss that she wanted to work every single weekend to get hours. Claimant's lack of childcare meant that she could no longer work during the workweek (Monday through Friday).

Upon claimant's return, the employer broke its staff down into "teams" to minimize exposure during the pandemic. Therefore, the employer would only allow claimant to work every other weekend. Claimant does not remember how long that arrangement lasted.

Claimant secured daycare with a former daycare provider so she could return to work. Claimant returned to full-time employment around the end of May 2020. Once claimant returned full time, she worked 35 hours per week.

Claimant transitioned from full-time to part-time in October 2020. In the part-time position, her boss asked her how many hours she wanted and claimant said she wanted at least 25 hours per week. Claimant testified that she worked between 23 and 25 hours each week, and that her schedule varied from week to week.

Claimant reopened her claim in December because the employer decided to cut all part-time employees' hours due to COVID-19. This was right before Christmas. Once the employer cut hours, claimant only worked between five and ten hours per week. She testified that she never worked more than 15 hours per week after the employer's decision to cut hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not eligible for 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".

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 this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

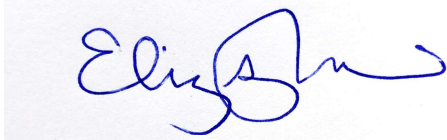
The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

Here, there are two periods of employment to discuss. Claimant began filing for benefits in March 2020 due to reduced employment because of personal illness, quarantine, and lack of childcare. Claimant was not prevented from working her full-time schedule by the employer. Rather, she was told by the hospital to quarantine, and then she elected to work part-time hours because she had no childcare. Claimant was not partially unemployed and eligible for benefits in the spring and summer of 2020.

The second relevant period began in December 2020, when claimant began filing for benefits after her hours were reduced. At that point, claimant was a part-time employee who had no guaranteed hours. She admits that her hours varied from week to week, and it is the expectation that the hours of a part-time employee will fluctuate based on the needs of the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to thereafter, the claimant is not partially unemployed and is not eligible for benefits.

DECISION:

The March 9, 2021 (reference 04) unemployment insurance decision is modified in favor of employer Casey's Marketing Company. Claimant was neither totally unemployed nor partially unemployed effective March 29, 2020, and therefore she is not eligible for unemployment insurance benefits. Benefits must be withheld.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 4, 2021
Decision Dated and Mailed

lj/kmj