

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERALYN F VOLKERT

Claimant

APPEAL 20A-UI-00281-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMP FOSTER YMCA INC

Employer

OC: 11/24/19

Claimant: Respondent (2)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(26) – Able and Available

STATEMENT OF THE CASE:

Camp Foster YMCA Inc. (employer) appealed a representative's December 31, 2019, decision (reference 08) that concluded Jeralyn Volkert (claimant) was eligible to receive unemployment insurance benefits as of November 24, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2020. The claimant did not provide a telephone number but participated by sending a document. The employer participated by Amanda Shaffer, Chief Financial Officer.

The claimant's document was entered into evidence as Exhibit A. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 11, 2019, as a part-time child care provider working before and after school. The claimant was only available for work when she was not substitute teaching at one of eleven schools. She told employer when she was available.

On November 24, 2019, the claimant filed for unemployment insurance benefits. Her base period of employment was from the third quarter of 2018, to the second quarter of 2019, and her weekly benefit amount was 184.00. All the claimant's base period wages were from substitute teaching (on call) or from part-time work with the employer.

For the pay period from November 25 to December 8, 2019, the claimant did not work any hours with the employer even though work was available. The claimant was not available due to illness, transportation issues, and weather. For the pay period from December 9 to

December 22, 2019, the claimant was available to work 8.92 hours with the employer. For the pay period from December 23, 2019, to January 5, 2020, the claimant worked 32.68 hours and earned \$305.96. The employer attributed approximately half of the earnings would have been earned in each of the two weeks.

The claimant reported to the department that she earned no wages from any employer for the week ending November 30, 2019. For the week ending December 7, 2019, she reported \$250.00 in earnings from all employers. She reported \$455.00 in earnings from all employers for the week ending December 14, 2019. For the week ending December 21, 2019, she reported \$321.00 in earnings from all employers. She reported \$72.00 in earnings for the week ending December 28, 2019. The claimant did not file a weekly report after the week ending December 28, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not eligible to receive unemployment insurance benefits.

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.

Iowa Admin. Code r. 871-24.23(1) 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.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed

not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). During the three-week period ending December 21, 2019, the claimant reported weekly earnings exceeding her weekly benefit amount plus \$15.00 or \$199.00. During that period, she was not eligible to receive unemployment insurance benefits.

During the week ending November 30, 2019, the claimant was not able and available for work. She called to say she would not be working due to transportation/weather problems or medical issues. When employees are not able and available for work due to medical issues or transportation, they are not eligible to receive unemployment insurance benefits. The claimant was not eligible to receive unemployment insurance benefits for the week ending November 30, 2019.

For the week ending December 28, 2019, the claimant appears to have under-reported her wages. The wages reported should have been closer to \$153.00. The claimant did not provide any information about whether she was able and available for work during this week in her documentation. For the week ending December 28, 2019, the claimant was not eligible to receive unemployment insurance benefits because she did not provide proof of her availability.

DECISION:

The representative's December 31, 2019, decision (reference 08) is reversed. The claimant is disqualified from receiving unemployment insurance benefits as of November 24, 2019.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn