

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAKEN L JONES
Claimant

HOA HOTELS LLC
Employer

APPEAL NO. 21A-UI-12657-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
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 filed a timely appeal from the May 14, 2021, reference 01, decision that denied benefits effective March 14, 2021, based on the deputy's conclusion that the claimant was still employed same hours and wages as in the original contract of hire and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on July 30, 2021. Claimant participated. The employer was not available at the number the employer registered for the hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBIN, DBRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work since March 14, 2021.
Whether the claimant was partially and/or temporarily unemployed since March 14, 2021.
Whether the employer's account may be charged for benefits for the period beginning March 14, 2021.

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 March 14, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$305.00. The claimant has made weekly claims for the period of March 14, 2021 through July 17, 2021.

The claimant is employed by HOA Hotels, L.L.C. as a server and "key hourly" at J Bar, located in Davenport. The claimant began the employment in 2014. HOA Hotels is the sole base period employer. Until the COVID-19 pandemic became a factor in the employment in March 2020, the claimant averaged three shifts (30 hours) a week as a waitress/server and another 10 hours a week as a "key hourly." The claimant's server wage was \$4.55 plus tips. Tips averaged \$300.00 per week. The claimant's "key hourly wage" was \$14.00.

The employer's business temporarily closed in mid-March 2020 in response to Governor Reynolds' March 17, 2020 Proclamation of Public Health Disaster, in which the Governor directed restaurants to discontinue in-person dining to slow community spread of COVID-19. When the employer reopened in May 2020, it was for carry-out only. The employer recalled the claimant to employment shortly thereafter, but at reduced work hours and to the server duties only.

Since the new claim year that started March 14, 2021, the claimant has largely continued at the reduced hours. During the weeks that ended April 10, June 19, July 26, and July 17, 2021, the claimant managed to earn wages that exceeded her weekly benefit amount plus \$15.00. During the other weeks since March 14, 2021, the claimant's earned less than her weekly benefit amount plus 415.00. Since March 14, 2021, the claimant has been physically and mentally able to work and has made herself available for the work the employer has for her. The claimant has not changed her availability relative to her prior availability.

The claimant has provided a note from the employer that explicitly states the claimant is working reduced hours and that the employer does not wish to contest her claim for benefits.

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 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 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).

Since March 14, 2021, that claimant has been able to work and available for work. Since March 14, 2021, the claimant has been partially unemployed, except during the weeks that ended April 10, June 19, June 26, and July 17, 2021, when her wages exceeded her weekly benefits amount by more than \$15.00. Effective March 14, 2021, the claimant is eligible for benefits under a theory of partial unemployment, provided she meets all other eligibility requirements. However, the claimant cannot be deemed partially unemployed during the weeks that ended April 10, June 19, June 26, and July 17, 2021 and is not eligibility for benefits for those specific weeks. Benefits may be assessed to the employer's account.

DECISION:

The May 14, 2021, reference 01, is modified in favor of the claimant. Since March 14, 2021, the claimant has been able to work and available for work, but partially unemployed except for the weeks that ended April 10, June 19, June 26, and July 17, 2021. Effective March 14, 2021, the claimant is eligible for benefits under a theory of partial unemployment, provided she meets all other eligibility requirements. Because the claimant cannot be deemed partially unemployed during the weeks that ended April 10, June 19, June 26, and July 17, 2021, she is not eligibility for benefits for those specific weeks. Benefits may be assessed to the employer's account.

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

James E. Timberland
Administrative Law Judge

August 05, 2021
Decision Dated and Mailed

jet/ol