

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAWN A BISHOP**  
Claimant

**BLACKHAWK SERVICES CORP**  
Employer

**APPEAL 21A-UI-06670-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/29/20**  
**Claimant: Appellant (1)**

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Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Dawn Bishop (claimant) appealed an Iowa Workforce Development February 8, 2021, decision (reference 02) that denied benefits based on her continued employment with Blackhawk Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 12, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**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 April 13, 2020, and is currently working as a full-time machine operator. The employer did not have work for her from November 22, 2020, through November 28, 2020. The claimant returned to work on November 29, 2020.

The claimant filed for unemployment insurance benefits with an effective date of November 24, 2019. Her benefit year ended on November 22, 2020. She filed a new claim year effective November 29, 2020. The claimant thought she filed her new claim effective November 22, 2020, but she did not. She did not have an open unemployment insurance claim for the week ending November 28, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

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 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

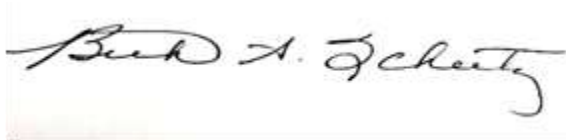
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

The claimant wished to receive unemployment insurance benefits for the week ending November 28, 2020, but did not file for benefits until the following week. The claimant was

working full-time for the employer as of November 29, 2020. The claimant is disqualified from receiving unemployment insurance benefits because the claimant was not available for other work on November 29, 2020. This administrative law judge can make no determination on eligibility for benefits for the week ending November 28, 2020, because no claim for benefits was filed for that week.

**DECISION:**

The February 8, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 29, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied.



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Beth A. Scheetz  
Administrative Law Judge  
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May 19, 2021  
Decision Dated and Mailed

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