

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHANCE INGLES**

Claimant

**APPEAL 21A-UI-09238-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTER OF NONE LLC**

Employer

**OC: 02/07/21**

**Claimant: Respondent (2R)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.7(2)A(2) – Charges – Same base period employment

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 17, 2021 (reference 1) unemployment insurance decision that granted benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 16, 2021, at 9:00 a.m. Claimant participated. Employer participated through Justin Berkley. Exhibit 1 was admitted into the record. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is able to and available for work?

Whether claimant is totally, partially or temporarily unemployed?

Whether claimant is still employed at the same hours and wages?

Whether employer's account is subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Chance Ingles, started working as a full-time bartender / server in October 2018. The claimant's rate of pay was \$4.25. The claimant received an average of 36 hours per week.

The employer has a Covid19 infection spread mitigation policy. It states in pertinent part that an employee who tests positive must remain away from the employer's premises for 10 days and obtain a negative test result before returning to work. (Exhibit 1)

On February 12, 2021, the claimant tested positive for Covid19. He sent the results to Assistant Manager Brian Friedrichsen. The claimant's health care provider instructed him to quarantine for 14 days. The administrative record shows the claimant reported receiving \$500 in earnings for the week ending February 13, 2021. It shows the claimant reported receiving zero dollars in

earnings for the week ending February 20, 2021. The claimant did not file weekly claims for other weeks.

On February 25, 2021, the claimant obtained a Covid19 test. The claimant returned to work on February 28, 2021.

The claimant separated from employment on March 29, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant the claimant was not able to work effective February 12, 2021. As a result, the remaining issues are moot.

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 96.19, 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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. R. 871-24.23(1) and (35) provide:

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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

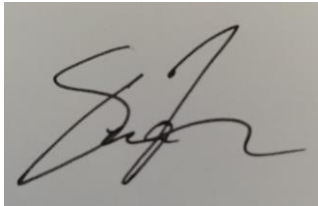
The claimant was either ill or subject to doctor's restrictions during the two weeks he made weekly claims. These circumstances are disqualifying under Iowa Admin. R. 871-24.23(1) and (35). As a result, the remaining issues regarding partial unemployment are moot. Benefits are denied.

**DECISION:**

The March 17, 2021 (reference 1) unemployment insurance decision is reversed. The claimant was either ill or subject to doctor's restrictions which rendered him unable to work. Benefits are denied.

**REMAND:**

The administrative law judge is remanding to the Benefits Bureau the determination of whether the claimant's separation from the employer on March 29, 2021 is disqualifying.



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Sean M. Nelson  
Administrative Law Judge  
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July 1, 2021  
Decision Dated and Mailed

smn/mh