

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHEILA FERGUSON**  
Claimant

**APPEAL NO. 20A-UI-06626-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEDEX GROUND PACKAGE SYSTEM INC**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (1/R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38)(b) – Partial Unemployment  
Iowa Code Section 96.7(2)(a)(2)(a) – Employer Liability

**STATEMENT OF THE CASE:**

Sheila Ferguson filed a timely appeal from the June 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Ms. Ferguson was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on July 27, 2020. Ms. Ferguson participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been partially unemployed since establishing her claim for benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheila Ferguson established an original claim for benefits that was effective April 12, 2020. Iowa Workforce Development set her weekly benefit amount at \$286.00. By the time of the July 27, 2020 appeal hearing, Ms. Ferguson had made weekly claims for the 14 consecutive weeks between April 12, 2020 and July 18, 2020. Ms. Ferguson is currently employed by FedEx Ground Package System, Inc. as a part-time package handler. FedEx is the sole base period employer. Ms. Ferguson's hourly wage is \$16.50. Ms. Ferguson's weekly work hours at FedEx have traditionally ranged from 30 to 35 hours per week. Ms. Ferguson's weekly hours worked and weekly wages from the FedEx employment during the period of April 12, 2020 and July 25, 2020 were as follows. 1.5X means hours for which the employer paid Ms. Ferguson 1.5 times her regular wage. Ms. Ferguson has not reported any of her FedEx wages as part of her weekly claims.

Benefit Week End Date	Regular Hours	1.5X Hours	Wages
4/18/20	30.22		498.63
4/25/20	31.85	1.5	525.52 + 37.12
5/2/20	31.65	7.19	522.22 + 177.95
5/9/20	31.92		526.68
5/16/20	32.93		543.34
5/23/20	32.57		537.40
5/30/20	26.9 (+3.5 holiday pay)		443.85 + 57.75
6/6/20	32.09 (+40 unused PTO)		529.48 + 660.00
6/13/20	35.26		581.79
6/20/20	33.47		555.25
6/27/20	35.16		580.14
7/4/20	31.62 (+3.5 holiday pay)		521.73 +57.75
7/11/20	33.9		559.35
7/18/20	36.72		605.88
7/25/20	32.25		532.12

Ms. Ferguson also owns and operates a construction business.

**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 96.19(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.

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).

The evidence in the record establishes that Ms. Ferguson has been able to work and available for work since she established the original claim for benefits that was effective April 12, 2020. However, the evidence also establishes that Ms. Ferguson has not been partially unemployed within the meaning of the law since she established the original claim. Since Ms. Ferguson

established her claim for benefits, she has continued to receive the same employment from FedEx as existed as in the base period. Since she filed the original claim, Ms. Ferguson's weekly wages from the FedEx employment have consistently exceeded her weekly benefit amount plus \$15.00. Benefits are denied for the period beginning April 12, 2020. The disqualification continued at the time of the appeal hearing and shall continue so long as Ms. Ferguson's weekly wages exceed her weekly benefit amount plus \$15.00. The employer's account will not be charged for benefits for the period of April 12, 2020 through July 25, 2020 and for any week beyond that day during which the employer continues to provide the same employment and claimant's wages exceed her weekly benefit amount by more than \$15.00.

This matter will be remanded to the Investigations & Recovery Unit for entry of overpayment decisions regarding the regular benefits and FPUC benefits the claimant has received since she established her claim for benefits and for further action as the unit deems appropriate.

**DECISION:**

The June 12, 2020, reference 01, decision is affirmed. The claimant has been able and available for work since establishing her claim for benefits. The claimant has not been partially unemployed since establishing her claim for benefits. Benefits are denied for the period beginning April 12, 2020. The disqualification continued at the time of the appeal hearing and shall continue so long as the claimant's weekly wages exceed her weekly benefit amount plus \$15.00. The claimant must meet all other eligibility requirements. The employer's account will not be charged for benefits for the period of April 12, 2020 through July 25, 2020 and for any week beyond that during which the employer continues to provide the same employment and claimant's wages exceed her weekly benefit amount by more than \$15.00.

This matter is remanded to the Investigations & Recovery Unit for entry of overpayment decisions regarding the regular benefits and FPUC benefits the claimant has received since she established her claim for benefits and for further action as the Investigations & Recovery Unit deems appropriate.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

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

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James E. Timberland  
Administrative Law Judge

September 9, 2020  
Decision Dated and Mailed

jet/sam