

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN M RICHEY
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-03130-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2R)

Iowa Code § 96.19(38)a & b – 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
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Parco LTD., filed an appeal from the April 8, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 7, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Juliet Diaz, human resources manager.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-19 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates as a Wendy’s restaurant. The claimant has worked two periods of employment for this employer: July 4, 2019-December 16, 2019, and most recently, she began employment in February 2020. At the time of hearing, the claimant had most recently worked on May 3, 2020. She was hired part-time, with no guarantee of shifts or hours each week. She is paid \$8.50 per hour and agreed upon these conditions at hire.

Claimant opened her claim for unemployment insurance benefits effective March 15, 2020. Each week since March 15, 2020, she has made a claim for unemployment insurance benefits. With the exception of the most recent week, (which the employer believes coincided with proposed exhibits being sent to her for the Appeals Hearing), the claimant has only worked one or two shifts scheduled each week, and called off all others. Since filing her claim for benefits, the claimant has called off the following shifts: March 16, 19, 20, 22, 23, 28, 29, 30, April 2, 3, 4, 9, 10, 13, 16, 17, 18, 19, 20, 23, 25, and 26, 2020. She has also declined shifts, most recently telling her manager that her co-worker could work an offered May 5, 2020 shift because she (claimant) had unemployment benefits.

Despite being denied benefits at initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The claimant received both regular and federal (through Federal Pandemic Unemployment Compensation) unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 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.

Because claimant was hired and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated at hire, she is not considered partially unemployed. Benefits cannot be paid.

Further, claimant has repeatedly chosen to decline available hours and is further restricting her availability to work, which also deems her ineligible for benefits. See Iowa Admin. Code r. 871-24.23(3). The claimant has stated she is doing so because she is receiving benefits. The claimant has voluntarily declined approximately 50-70% of shifts assigned to her.

The purpose of unemployment insurance benefits is to minimize the burden of **involuntary** unemployment. *Brumley v. Iowa Dept. of Job Service, 1980, 292 N.W.2d 126* The claimant is not involuntarily unemployed. She is choosing week after week not to work shifts scheduled for her. The claimant is voluntarily unemployed. She is not able to and available for work effective March 15, 2020. Benefits are denied.

Because benefits are denied for regular benefits, the claimant cannot be paid federal benefits under FPUC. The issues of whether the claimant has been overpaid regular and federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.

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. 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>.

DECISION:

The April 8, 2020 (reference 01) initial decision is reversed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, she should contact Iowa Workforce Development.

REMAND: The issues of whether the claimant has been overpaid regular and federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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May 11, 2020
Decision Dated and Mailed

jlb/scn