

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MILDRED I NYSTEL
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-03724-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Mildred Nystel (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated February 9, 2020 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on March 30, 2021. The parties were properly notified of the hearing. Claimant participated personally. Her sister, Carol Tucker, participated as a witness for her. Kwik Trip Inc (employer/respondent) was not reachable at the number registered for the hearing and so did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

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

Claimant began working for employer about six years ago. Claimant is still employed by employer as a part-time bakery worker. Claimant was hired to work between 22 and 28 hours per week. Wage records support that claimant was averaging about 25 hours per week during the base period.

Claimant took a leave of absence from April 14, 2020 through May 28, 2020. When she returned on May 29, 2020 her hours had been cut approximately in half. Since that time she has

only been scheduled to work between 12 and 15 hours per week despite continuing to be available work as in the base period.

Claimant has filed a claim for benefits each week from the benefit week ending April 11, 2020 through the benefit week ending March 20, 2021. Claimant's weekly benefit amount is \$272.00. Claimant has reported the wages earned each week she has filed. Claimant has reported wages in excess of her weekly benefit amount plus \$15.00 in the weeks ending September 26, October 24, October 31, 2020. Claimant has otherwise reported wages earned each week in an amount less than her weekly benefit amount plus \$15.00.

The administrative law judge notes a prior ALJ decision found claimant ineligible for benefits from April 5 through May 28, 2020. That decision was issued on October 5, 2020 and was not appealed further to the Employment Appeal Board (EAB). That decision therefore remains in force.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the Iowa Workforce Development decision dated February 9, 2020 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant was still employed for the same hours and wages is REVERSED. Claimant is eligible for benefits as set forth below.

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. 871-24.22(2)f 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.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

The administrative law judge finds claimant is able to and available for work from the benefit week ending June 6, 2020 and during each week filed thereafter. This is because claimant continued to be available for work during this time in the same way as in the base period. Claimant is partially unemployed during each week filed from the benefit week ending June 6, 2020 and thereafter, with the exception of the benefit weeks ending September 26, October 24, and October 31, 2020. Claimant is not eligible for benefits in those weeks because she earned wages in excess of her weekly benefit amount plus \$15.00 in those weeks.

The administrative law judge notes a prior ALJ decision found claimant ineligible for benefits from April 5 through May 28, 2020. That decision was issued on October 5, 2020 and was not appealed further to the Employment Appeal Board (EAB). That decision therefore remains in force.

DECISION:

The Iowa Workforce Development decision dated February 9, 2020 (reference 02) that denied benefits as of May 31, 2020 based on a finding claimant was still employed for the same hours and wages is REVERSED. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 02, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.