

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMI S MONOHON

Claimant

APPEAL 22R-UI-01057-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/28/21

Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant Jami S. Monohon filed an appeal from the June 28, 2021, (reference 01) unemployment insurance decision that denied benefits based on a finding claimant was still employed for the same hours and wages. A telephone hearing was scheduled for August 27, 2021. No hearing was held because the appellant failed to respond to the hearing notice and provide a telephone number at which the appellant could be reached for the scheduled hearing. On September 2, 2021, a default decision was issued dismissing the appeal. Claimant appealed to the Employment Appeal Board (EAB).

On December 2, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued, and a hearing was scheduled for February 2, 2022. Employer requested a postponement due to its late receipt of the notice of hearing. The request was granted. After due notice was issued, a hearing was held on February 18, 2022. Claimant participated personally. Employer did not participate. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 28, 2021?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed full time as a cashier since May 1, 2019.

Prior to the pandemic, claimant worked 36 hours a week, Monday through Thursday, from 9:00 p.m. to 6:00 a.m. Claimant was laid off in April 2020, and when she was recalled in June 2020, her hours were reduced by employer due to its reduced hours as a result of the pandemic. The

store began closing at midnight instead of remaining open 24 hours per day. Claimant's new hours were 8:00 p.m. to midnight. In January 2021, the store extended its hours and remained open until 1:00 a.m., so claimant worked an extra hour each day, for a total of 20 hours per week.

During the last week of April 2021, claimant requested to reduce her hours because her mom was diagnosed with cancer and claimant needed to drive her to appointments. Claimant asked to be taken off the schedule on Mondays and Thursdays and employer agreed. Claimant continued to work Tuesdays and Wednesdays. In May 2021, claimant planned to quit her employment to care for her mother full time. Employer suggested claimant take a leave of absence to care for her mother, and employer would remove her from the schedule until she notified it she was available to work again. Claimant agreed. Claimant's last day working for employer was May 31, 2021. She notified employer in August 2021 that she would not return to work due to personal reasons.

Claimant filed her initial claim for unemployment insurance benefits effective March 29, 2020. She filed a claim for a second benefit year effective March 28, 2021. Claimant's weekly benefit amount is \$233.00. Claimant reported her wages each week she worked and filed a weekly claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the four-week period ending April 24, 2021. Benefits are allowed during this period. Effective April 25, 2021, claimant was not able to and available for work. Benefits are denied.

Iowa Code § 96.1A(37) 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 96.7(2)a(2)(a), (b), and (c) 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 Code § 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".

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). Total and temporary unemployment

occur when an individual has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed services and earned wages for each week she claimed benefits between March 28, 2021, and April 24, 2021. She is not totally or temporarily unemployed.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be working less than his or her regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* Claimant's weekly benefit amount plus fifteen dollars is \$233.00. Any week claimant earned more than \$248.00 in gross wages she is not eligible for benefits.

Employer reduced claimant's hours, and during the four-week period ending April 24, 2021, she earned less than \$248.00 each week. This is less than her weekly benefit amount plus fifteen dollars. Claimant was therefore partially unemployed and eligible for benefits during the four weeks ending April 24, 2021.

Iowa Admin. Code r. 871-24.23 (10) and (16) provide:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Effective April 25, 2021, claimant requested to reduce her own hours worked due to her need to assist her sick mother. While the administrative law judge is sympathetic to claimant's situation, the reduction in her hours was attributable to restrictions claimant placed on her availability for work. Effective May 30, 2021, claimant was on a voluntary approved leave of absence from employer to care for her mother. As such, she is not considered available for work. Benefits are denied effective April 25, 2021.

DECISION:

The June 28, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was partially unemployed during the four-week period ending April 24, 2021, and is eligible for benefits during this period. Claimant is not able to and available for work effective April 25, 2021, and regular, state-funded unemployment insurance benefits are denied.



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March 15, 2022
Decision Dated and Mailed

sa/mh