

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANN M BODENSTEINER
Claimant

SANCTUARY SPA LLC
Employer

APPEAL 21A-UI-00383-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Ann M. Bodensteiner, the claimant/appellant, filed an appeal from the December 3, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 8, 2021. Ms. Bodensteiner participated and testified. The employer participated through Steve Schamberger. Official notice was taken of the administrative record.

ISSUE:

Is Ms. Bodensteiner temporarily unemployed and able to and available for work?
If so, 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: Ms. Bodensteiner began working for the employer, a base period employer, in March 2015. She works as part-time licensed massage therapist. She is paid on commission of 45 percent of any service she provides plus tips.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. On March 15, 2020, the employer closed due to the Governor's proclamation. The employer reopened on May 18, 2020.

Due to the pandemic, Ms. Bodensteiner had about half the appointments she had before the pandemic because customers were not making appointments. This reduction lasted until about September 2020. The employer continued to offer Ms. Bodensteiner the same wages and hours.

The employer closed from August 10, 2020 through August 16, 2020 due to damage from the derecho. Ms. Bodensteiner returned to work on August 17.

Ms. Bodensteiner filed her claim for benefits effective March 15, 2020, and the weekly benefit amount is \$267.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Bodensteiner is temporarily unemployed from March 16, 2020 through April 11, 2020, totally unemployed from April 12, 2020 through May 17, 2020 and temporarily unemployed again from August 10, 2020 through August 16, 2020 and this part-time employer is relieved of benefit charges.

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".

Iowa Code § 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.

Iowa Code section 96.7(2)a(2)(a) 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.

Ms. Bodensteiner is temporarily unemployed from March 16, 2020 through April 11, 2020. Ms. Bodensteiner was unemployed from her regular job during this four-week time period due to the COVID-19 public health emergency, and her employment had not been terminated. Benefits are allowed as long as she is otherwise eligible.

Ms. Bodensteiner is totally unemployed from April 12, 2020 through May 17, 2020 as she didn't perform any work and no wages were owed to her. Benefits are allowed as long as she is otherwise eligible.

Ms. Bodensteiner is temporarily unemployed again from August 10, 2020 through August 16, 2020. Ms. Bodensteiner was unemployed from her regular job during this one-week time period due to the derecho storm, and her employment had not been terminated. Benefits are allowed as long as she is otherwise eligible.

Inasmuch as the current employer is offering the same wages and hours as in the base period contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The December 3, 2020, (reference 01) unemployment insurance decision is modified in favor of appellant, the employer. Ms. Bodensteiner temporarily unemployed from March 16, 2020 through April 11, 2020, totally unemployed from April 12, 2020 through May 17, 2020 and temporarily unemployed again from August 10, 2020 through August 16, 2020. Benefits are allowed, provided Ms. Bodensteiner is otherwise eligible. No charges shall be made to the employer's account.



Daniel Zeno
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February 19, 2021
Decision Dated and Mailed

dz/kmj