

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JADE M LINDERMAN
Claimant

THE SPORTS PAGE OF MASON CITY LLC
Employer

APPEAL 21A-UI-06477-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
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:

Jade M Linderman, the claimant/appellant filed an appeal from the February 24, 2021, (reference 02) unemployment insurance decision that denied benefits as of December 27, 2020. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2021. Ms. Linderman participated and testified. The employer participated through Steven Anderegg. Claimant's Exhibits A-C were admitted into evidence.

ISSUES:

Is Ms. Linderman partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Linderman began working for the employer, a base period employer, on August 2, 2020. She worked as a full-time bartender and was paid \$10.00 per hour.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the Governor's proclamation, the employer closed the bar part of its business but not the restaurant on, or about, December 3, 2020. As a result, the employer reduced Ms. Linderman's hours to about two five-hour shifts per week.

On December 14, Ms. Linderman asked the employer to remove her from the schedule because she was hoping to get a new job. On December 19, Ms. Linderman asked the employer to put her back on the schedule because she did not get a new job. Ms. Linderman also asked the employer to not schedule her for any hours from December 25 and beyond. On January 8, 2021 Ms. Linderman told the employer that she was to begin a new job on January 10. Ms. Linderman was scheduled to work one shift for this employer on January 15. Ms. Linderman asked to be removed from the schedule going forward but offered to pick up shifts in the future

when she was available and the employer had work. The employer agreed. Ms. Linderman picked up one shift on February 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Linderman is not able to and available for work from December 27, 2020 through January 9, 2021

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 (16) and (26) provide:

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

(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.

(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.

In this case, Ms. Linderman unduly limited her availability for work from December 25, 2020 through January 9, 2021, the day before she began working for her new employer. Since Ms. Linderman was not available for work during this time period, regular, state-funded unemployment insurance benefits are denied from December 25, 2020 through January 9, 2021.

Even though Ms. Linderman is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during this time period. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The February 24, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant, Ms. Linderman. Ms. Linderman was not available for work from December 25, 2020 through January 9, 2021. Benefits are denied during this period. Benefits are allowed effective January 10, 2021, provided Ms. Linderman is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 18, 2021
Decision Dated and Mailed

dz/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**