

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FRANCES H RYAN AL BAKRI
Claimant

APPEAL NO. 21R-UI-19344-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JO-ANN STORES LLC
Employer

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Frances Ryan Al Bakri, filed a timely appeal from the March 23, 2021, reference 02 (o.c. 03/29/20), decision that denied benefits effective January 10, 2021, based on the deputy's conclusion that the claimant was not at that time partially unemployed from her employment with Jo-Ann Stores, L.L.C. After due notice was issued, a hearing was held on November 9, 2021. Claimant participated. Tom Kuiper of Equifax represented the employer and presented testimony through Kathy Mattan. There were six appeal numbers set for a consolidated hearing: 21R-UI-19344-JTT, 21A-UI-20185-JTT, 21A-UI-20186-JTT, 21A-UI-20188-JTT, 21A-UI-20189-JTT AND 21A-UI-20190-JTT. Exhibits A through J were received into evidence. The administrative law judge took official notice of the following Agency administrative records: all of the Benefits Bureau decisions entered in connection with the March 29, 2020 and March 28, 2021 benefit years, DBRO, DBIN, KCCO, KPYX, WAGE-A, WAGE-C, and NMRO.

ISSUES:

Whether the claimant was able to work and available for work during the period of January 10, 2021 through March 20, 2021.

Whether the claimant was partially and/or temporarily unemployed during the period of January 10, 2021 through March 20, 2021.

Whether the employer's account may be charged for benefits for the period of January 10, 2021 through March 20, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an "additional claim" for benefits that was effective January 10, 2021. The additional claim was based on an original claim that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$135.00. The claimant made weekly claims that included a weekly claim for each of the weeks between January 10, 2021 and March 20, 2021. The claimant did not make a weekly claim for the week that ended March 27, 2021.

The claimant has at all relevant times been employed by Jo-Ann Stores, L.L.C. as a part-time clerk/customer service employee. The claimant began the employment in 2012. The claimant's duties consisted of serving customers, cutting fabric and assisting with maintaining the store. The claimant primarily worked on Wednesday, Thursday, Friday and/or Saturday. The claimant typically worked 12:30 to 5:30 p.m. Prior to COVID-19 becoming a factor in the employment in mid-March 2020, the claimant's wage was \$9.90 an hour. Prior to Covid becoming a factor in the employment, the claimant generally maintained 20 hours of availability per week.

When the COVID-19 pandemic arrived in March 2020, the employer temporarily discontinued allowing customers to enter the store and instead offered curbside service. During the summer of 2020, the employer recommenced allowing customers into the store, but at a reduced capacity.

In October 2020, the claimant decreased the number of shifts for which she was available. The claimant had transitioned to being available for work on Thursday, Friday, Saturday, and Sunday. On Sundays, the claimant would work from noon to 5:00 p.m. On the other days, the claimant would work from noon to 5:30 p.m. However, the claimant limited her availability for work Friday through Sunday to just two of those three days. By doing so, the claimant decreased her availability by one-fourth, to about 15 hours per week. This reduced availability continued throughout the period of January 10, 2021 through March 20, 2021. During this same period, the employer temporarily increased the claimant's wage to \$10.10, but reduced the amount of work available to the claimant so that the employer often only had two shifts per week for the claimant. The claimant worked all of the shifts she was scheduled to work during the period of January 10, 2021 through March 20, 2021. The claimant's weekly hours and wages during the relevant period were as follows:

<u>Week ending date</u>	<u>Hours worked</u>	<u>Wages</u>
1/16/21	5.5	55.55
1/23/21	8.0	80.80
1/30/21	10.5	106.05
2/6/21	9.0	90.90
2/13/21	9.0	90.90
2/20/21	8.0	80.80
2/27/21	8.0	80.80
3/6/21	11.0	111.10
3/13/21	10.5	106.05
3/20/21	16.5	166.65

REASONING AND CONCLUSIONS OF LAW:

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 unemployed⁴, 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 Admin. Code r. 871-24.22(2) 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.

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 96.1A(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.

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

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

Due to the claimant's restriction of her availability for work during the relevant period, compared to her earlier availability, the claimant would not ordinarily be able to meet the availability requirement. However, the employer further reduced the amount of work it had for the claimant to an amount well below the claimant's availability during the period of January 10, 2021 through March 13, 2021. Under the circumstances, the claimant's restriction would not be an undue restriction. The claimant cannot be faulted for being unavailable for work the employer did not make available to her. The evidence does not support the employer's assertion that the employer continued to have 20 hours of work for the claimant. Based on the weight of the totality of the circumstances, the administrative law judge concludes the claimant was available for work, but partially unemployed during the period of January 10, 2021 through March 13, 2021. The claimant is eligible for benefits for that period, provided the claimant is otherwise eligible. The employer's account may be charged for benefits for that period. The claimant was not partially unemployed during the week that ended March 20, 2021 because her wages for that week exceeded her weekly benefit amount by more than \$15.00. The claimant did not file a weekly claim for the week that ended March 27, 2021 and therefore cannot be considered for benefits for that week.

DECISION:

The March 23, 2021, reference 02 (o.c. 03/29/20), decision is modified in favor of the claimant as follows. The claimant met the availability requirement and was partially unemployed during the period of January 10, 2021 through March 13, 2021. The claimant is eligible for benefits for that period, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that period. The claimant was not partially unemployed during the week that ended March 20, 2021 and is not eligible for benefits for that week. The claimant did not file a weekly claim for the week that ended March 27, 2021 and therefore cannot be considered for benefits for that week.



James E. Timberland
Administrative Law Judge

November 23, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for the period of March 14, 2021 through March 27, 2021. 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, 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.