

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIE FRITZ
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-14621-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Marie Fritz, the claimant/appellant, filed an appeal from the June 18, 2021, (reference 01) unemployment insurance decision that denied benefits as March 28, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 23, 2021. Ms. Fritz participated and testified. Eric Renteria observed the hearing with Ms. Fritz. The employer participated through Traci McKoon, human resources manager, and Barbara Buss, Corporate Cost Control-Experian hearing representative. The administrative law judge took official notice of the administrative record, including the KCCO screen. Claimant's Exhibit A was admitted into evidence.

ISSUES:

Is Ms. Fritz able to and available for work?
Is Ms. Fritz on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Fritz began working for the employer, a base period employer, on May 20, 2014. She works as a part-time cashier and she was paid \$10.65 per hour.

On, or about, December 27, 2020, Ms. Fritz called in sick. The employer then took her off of the schedule. For the next six months, Ms. Fritz tried at least once a week, and sometimes more than once a week, to get the employer to schedule her for shifts again. Ms. Fritz went to the job site and asked to speak with someone about getting back on the schedule. She would be told to check with someone else but that person would not be at work. She messaged the employer via their messaging application but did not receive a respond. She called the employer and would be told that the person she needed to speak with was busy, or not at work that day, or would call her back later. She talked to the store manager who told her that that he would get her on schedule. She was not put back on the schedule. Ms. McKoon was unable to explain why the employer could not put Ms. Fritz back on the schedule after she called in in December 2020.

On June 29, 2021, Ms. Fritz gave the employer a doctor's note that said she needed a stool to sit on since she could not stand for long period of times. Finally, on July 6, 2021, the employer put Ms. Fritz back on the schedule. She returned to work as a part-time worker. The employer increased her pay to \$11.15 per hour. The employer moved Ms. Fritz from the cashier position to a position at self-check-out because the employer did not want employees sitting while working as a cashier and so Ms. Fritz could sit when she needed to.

After she returned to work, the employer told Ms. Fritz that they had put her on a leave of absence when she called in on, or about, December 27, 2020. Ms. Fritz had never requested a leave of absence.

Ms. Fritz also worked at Donna Renteria dba Myrtle Vera Hallmark, a base period employer. She worked as a part-time store associate and was paid \$8.00 per hour. In March 2020, this employer laid off Ms. Fritz due to lack of work as a result of the COVID-19 pandemic. Ms. Fritz remains laid off from this employer.

Ms. Fritz's weekly benefit amount is \$145.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Fritz is totally unemployed from March 28, 2021 through July 5, 2021, and Ms. Fritz is partially unemployed from July 6, 2021 through August 14, 2021.

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 § 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(10) and (26) 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.

(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. Fritz is totally unemployed from March 28, 2021 through July 5, 2021. During this time period, Ms. Fritz was not working at either employer and no wages were payable to her. Benefits are allowed for these weeks as long as Ms. Fritz is otherwise eligible.

From July 6, 2021 through August 14, 2021, Ms. Fritz is partially unemployed since she earned less than her weekly benefit amount plus \$15.00 during this time period. Partial benefits are allowed for these weeks as long as Ms. Fritz is otherwise eligible.

DECISION:

The June 18, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Fritz. Ms. Fritz is totally unemployed from March 28, 2021 through July 5, 2021, and Ms. Fritz is partially unemployed from July 6, 2021 through August 14, 2021. Benefits are allowed from March 28, 2021 through August 14, 2021 provided she is otherwise eligible.



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

August 27, 2021
Decision Dated and Mailed

dz/scn