

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER A RICHEY
Claimant

SHRI NILKANTH LLC
Employer

APPEAL 21A-UI-12122-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
Claimant: Respondent (2)

Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Employment at Same Hours and Wages

STATEMENT OF THE CASE:

On May 6, 2021, the employer, Shri Nilkanth, L.L.C., filed an appeal from the April 30, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant Jennifer A. Richey was employed part time and working when work was available and therefore eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Thursday, July 22, 2021. The claimant, Jennifer A. Richey, participated. The employer, Shri Nilkanth, L.L.C., participated through Amy Mortensen, Human Resources Director and Payroll Manager. Employer's Exhibits 1 and 2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed with the employer at the same hours and wages as contemplated in the contract of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a part-time front desk employee on February 26, 2021. Claimant remains employed with the employer in this capacity. Mortensen noted that claimant submitted her two-week notice on July 21, 2021, and intends to end her employment on August 7, 2021.

Claimant has worked part-time, if not full-time, hours for the employer since her date of hire. The employer has had work available for claimant at the front desk throughout her employment. However, on occasion, claimant has limited her availability for work.

Claimant opened her unemployment insurance claim effective March 14, 2021. She then filed for unemployment insurance benefits each week for four weeks: the week ending March 20; the

week ending March 27; the week ending April 3; and the week ending April 10. During each of the four weeks for which claimant filed claims for unemployment insurance benefits, she reported working and earning wages. Each week, claimant reported earning wages in excess of her weekly benefit amount plus fifteen dollars.

Mortensen indicated that claimant voluntarily reduced her hours during multiple weeks while filing for unemployment insurance benefits. During the weeks ending March 27, April 3, and April 10, claimant requested time off from the employer. The employer had additional work available for claimant, but she reduced her availability for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is neither totally nor partially unemployed. Benefits are withheld.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In this case, the claimant was hired into a part-time position. She has worked part-time hours during her entire employment. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The April 30, 2021 (reference 01) unemployment insurance decision is reversed. Claimant is neither totally nor partially unemployed. Benefits are withheld effective March 14, 2021.



Elizabeth A. Johnson
Administrative Law Judge

July 29, 2021
Decision Dated and Mailed

lj/ol