

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUNG LE
Claimant

KUM & GO LC
Employer

APPEAL 21A-UI-07923-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Hung Le (claimant) appealed an Iowa Workforce Development March 10, 2021, decision (reference 01) that denied benefits based on his continued employment with Kum & Go (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 28, 2021. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge spoke to a person who indicated the witness was not available and no one could take his place. The administrative law judge left a message for the witness. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked from November 2019, through March 18, 2021, as a full-time sales associate. He worked fifty-five to seventy-two hours per week. The claimant quit work on March 18, 2021.

The claimant did not receive decisions from the agency because the agency did not include his street number.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 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:

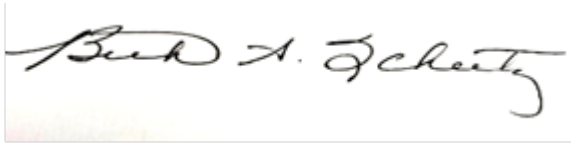
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

From January 24, 2021, until March 18, 2021, the claimant was at all times employed full-time and earning wages from the employer. He cannot be considered totally, partially, or temporarily unemployed during that time. The claimant was not unemployed and not monetarily eligible for unemployment insurance benefits. Benefits are denied as of January 24, 2021.

The claimant has appealed a decision regarding his separation from employment. The issue of whether he is eligible for unemployment insurance benefits after his separation is determined by that decision.

DECISION:

The March 10, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was not able and available for other work effective January 24, 2021.

A handwritten signature in cursive script, reading "Beth A. Scheetz". The signature is written in black ink on a white background.

Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 11, 2021
Decision Dated and Mailed

bas/scn