

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LULEYMA A PEREZ

Claimant

APPEAL 21A-UI-07613-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 06/07/20

Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On March 15, 2021, Luleyma A. Perez (claimant) filed an appeal from the March 10, 2021, reference 01, unemployment insurance decision that denied benefits effective June 7, 2020, based upon the determination she was still employed at the same hours and wages with Tyson Fresh Meats, Inc. (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on May 25, 2021. The claimant participated personally. The employer participated through Karina Mellado Monroy, Human Resources Generalist. Sylvia (interpreter number 8768), from CTS Language Link, provided Spanish interpretation for the hearing. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

Was the claimant able to work, available for work, and actively and earnestly seeking work effective June 7, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on April 17, 2017, as a full-time Packer. The claimant filed her claim for unemployment benefits effective June 7, 2020 and the weekly benefit amount is \$481. The claimant filed for benefits each week through the week ending September 26 and did not report any wages earned.

The employer reduced hours to 36 hours a week for the two weeks ending June 13 and June 27. The claimant's hourly wage is \$17.20. The following shows the number of hours the claimant worked, her gross wages for each week, and the reasons her hours were reduced if applicable:

Week Ending	Hours Worked	Wages Earned	Reason for Reduced Hours
06/13/20	22.75	\$391	She called in sick on June 11.
06/20/20	30.92	\$532	N/A
06/27/20	30.69	\$528	N/A
07/04/20	30.72	\$528	NA
07/11/20	25.78	\$443	She had prior approved absences on July 6, 7, and 8.
07/18/20	35.33	\$608	N/A
07/25/20	44.17	\$796	N/A
08/01/20	40.80	\$708	N/A
08/08/20	53	\$1,023	N/A
08/15/20	26.50	\$456	She called in sick on August 13.
08/22/20	49.75	\$940	N/A
08/29/20	54	\$1,049	N/A
09/05/20	54.25	\$1,056	N/A
09/12/20	40.17	\$692	N/A
09/19/20	42.17	\$744	N/A
09/26/20	53	\$1,023	N/A

The total wages reported by the employer's witness from June 28 through September 26 total \$10,066; however, the employer reported paying the claimant \$12,051 in gross wages during the third quarter of 2020 on its quarterly report. Whether the claimant underreported wages earned and is subject to a penalty for misrepresentation has not been investigated by the Integrity Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed under Iowa law or able to and available for work effective June 7, 2020. Benefits are denied.

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". [Emphasis added.]

Iowa Code section 96.19(38) provides:

Definitions.

38. 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. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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 provides, in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Under Iowa Employment Security Law, individuals must be unemployed, as defined by Iowa law, through no fault of their own. Iowa Code §§ 96.2 and 96.19(38). Total and temporary unemployment occur when someone has received no wages and performed no services during any given week. Iowa Code § 96.19(38)a, c. In this case, the claimant performed services and earned wages for each week she claimed benefits. She was not totally or temporarily 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 **and** earn less than their weekly benefit amount plus fifteen dollars in insured wages. Iowa Code § 96.19(38)b. The claimant worked and earned wages exceeding \$496, which is her weekly benefit amount plus fifteen dollars, every week except the weeks ending June 13, July 11, and August 15. She is not eligible for partial benefits in any week in which she earned benefits in excess of \$496 because she was not unemployed as defined by Iowa law.

For the three weeks in which she earned less than \$496, the issue becomes who limited the claimant's hours. If the employer did not have work available, the claimant would be partially unemployed. However, if the employer had work available and the claimant elected not to work, she is not eligible for benefits because she is not unemployed through no fault of her own. In this case, the claimant's hours were reduced because she called in sick or had scheduled time off, not as a result of a lack of work. Therefore, she is not eligible for unemployment insurance benefits. Benefits are denied.

Whether the claimant underreported wages earned, as delineated in the findings of fact, and is subject to a penalty for misrepresentation is remanded to the Integrity Bureau for investigation.

DECISION:

The March 10, 2021, reference 01, unemployment insurance decision is affirmed. The claimant is not unemployed or able to work and available for work effective June 7, 2020. Benefits are denied.

REMAND:

Whether the claimant underreported wages earned, as delineated in the findings of fact, and is subject to a penalty for misrepresentation is remanded to the Integrity Bureau for investigation.



Stephanie R. Callahan
Administrative Law Judge

June 04, 2021
Decision Dated and Mailed