

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRANDON R ODELL**  
Claimant

**THRIVE TOGETHER LLC**  
Employer

**APPEAL 21A-UI-14212-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21  
Claimant: Appellant (4R)**

Iowa Code §96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Brandon R Odell, the claimant/appellant, filed an appeal from the June 8, 2021, (reference 01) unemployment insurance decision that allowed REGULAR, state unemployment insurance (UI) benefits as of March 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2021. Mr. Odell participated and testified. The employer participated through Kira Cross, general manager, and John O'Fallon, hearing representative. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Odell partially unemployed and able to and available for work?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Odell began working for the employer on August 6, 2011. He worked as a part-time dishwasher and prep cook. He was paid \$11.50 per hour in March 2020 and \$13.00 per hour as of December 23, 2020.

Sometime in early 2014 Mr. Odell began working full-time hours. He worked full time hour until the employer laid him off in March 2020 due to the COVID-19 pandemic. In June 2020, Mr. Odell returned to work. However, the employer reduced his hours to about twenty hours per week. The employer continued to offer Mr. Odell reduced hours of about twenty hours per week until he was separated from employment on, or about, July 26, 2021.

The issue of Mr. Odell's separation from employment with this employer has not been investigated by the Benefits Bureau of Iowa Workforce Development.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Odell is partially unemployed the weeks ending April 10, 2021, April 24, 2021, May 1, 2021, May 15, 2021, May 29, 2021, and June 12, 2021.

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.

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, Mr. Odell is partially unemployed the weeks listed above. His hours were reduced due to the COVID-19 pandemic. Mr. Odell has no other base-period wages. Partial benefits are allowed as long as he is otherwise eligible.

The employer continuously offered Mr. Odell the same wages but reduced his hours because the COVID-19 pandemic led to less available work. Although the employer was not offering Mr. Odell the same employment at the time he was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment if the claim was filed before June 12, 2021. Mr. Odell's claim was filed effective March 14, 2021.

**DECISION:**

The June 8, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Odell. Mr. Odell is partially unemployed the weeks ending April 10, 2021, April 24, 2021, May 1, 2021, May 15, 2021, May 29, 2021, and June 12, 2021. Benefits are allowed during these weeks. The employer is relieved of benefit charges for these weeks.

**REMAND:**

This issue of Mr. Odell's separation from employment with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
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August 20, 2021  
Decision Dated and Mailed

dz/mh