

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONYA ROBINSON
Claimant

KARMA HOSPITALITY LLC
Employer

APPEAL 22A-UI-01370-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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:

Karma Hospitality LLC, the employer/appellant, filed an appeal from the December 7, 2021, (reference 02) unemployment insurance (UI) decision that allowed benefits as of November 21, 2021 because she was on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2022. The employer participated through Becky Broadston, general manager. Ms. Robinson did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Robinson able to and available for work?
Is Ms. Robinson temporarily or partially unemployed?
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: Ms. Robinson began working for the employer, a base period employer, about five years ago. She works as a part-time housekeeper. She is guaranteed work five days per week and at least four hours per day. Her hourly pay is \$10.00. Ms. Robinson has no other base period wages.

Ms. Robinson was out of work due to a scheduled surgery on November 18, 2021. Ms. Robinson did not attend work from November 18, 2021 through December 21, 2021. Per her doctor's advice, Ms. Robinson returned to work on light duty, working every other day, on December 22, 2021. The employer continuously had work available for Ms. Robinson. Ms. Robinson returned to working her usual part-time schedule on December 31, 2021. Since then Ms. Robinson has continued to work in her same job at her same pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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".

Iowa Code § 96.1A(37) 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(2), (6), and (26) provide:

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

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in

status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to 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.

Ms. Robinson is not able to and available for work from November 18, 2021 through December 21, 2021 due to her surgery and recovery. Ms. Robinson returned to work on light duty, per her doctor's advice, from December 21, 2021 through December 31, 2021. The employer had work available for Ms. Robinson while she was on light duty, but Ms. Robinson was not able to work more hours per her doctor's advice. Ms. Robinson is not totally, partially or temporarily unemployed from December 21, 2021 through December 31, 2021. Since Ms. Robinson is not able to and available for work as of November 18, 2021, and she had since returned to her job, benefits are denied as of November 18, 2021. .

DECISION:

The December 7, 2021, (reference 02) unemployment insurance decision is reversed. Ms. Robinson is not able to and available for work as of November 18, 2021. Benefits are denied as of November 18, 2021.



Daniel Zeno
Administrative Law Judge
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February 28, 2022
Decision Dated and Mailed

dz/scn