

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINE M WARTH

Claimant

APPEAL 21A-UI-18971-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACOSTA EMPLOYEE HOLDCO LLC

Employer

OC: 02/07/21

Claimant: Respondent (1R)

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant's voluntary resignation without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 7, 2021. The claimant, Christine Warth, participated personally. The employer, Acosta Employee Holdco LLC, participated through Anna Marie Gonzalez, hearing representative and witness, Sabrina Swinford. The claimant offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file. Employer's Exhibits E1-E6 were offered and admitted. The claimant sent text messages to her employer

ISSUE:

The issue is whether the claimant is able and available effective February 7, 2021.

The issue is whether the claimant is totally or partially unemployed effective February 7, 2021.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in December 2018, as a part-time retail service merchandiser. Claimant's job was to do audits, stocking services, place coupons or anything else the manufacturer may request to help at the retail level. Claimant's immediate supervisor was Richard Pilla. Claimant filed a claim for unemployment insurance benefits with an effective date of February 7, 2021. Claimant was hired on a part-time basis with no minimum number of hours guaranteed. Claimant's hours were always sporadic with Acosta Employee Holdco LLC. Claimant last worked for Acosta Employee Holdco LLC in June 2021. Claimant never informed her employer that she quit, but Claimant told the employer that she had her schedule for another company set and she could not pick up additional hours for Acosta Employee Holdco.

Claimant was then unable to access the work scheduling portal and she did not work any additional shifts. Claimant was discharged by letter on June 7, 2021 because she had not scheduled work and then became uncommunicative. The claimant had a consistent pattern of overdue calls claimant would not respond to phone calls about why she was overdue or not able to work. Claimant did send a text message to employer stating she had a full schedule and could not pick up any work. The claimant has separated from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not able and available for work.

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 96.4(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".

The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a full-time worker. The employer certified that hours were available for the employer. The claimant was not able and available for work because of the hours in her other job.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was not temporarily or totally unemployed. The question becomes whether she was partially unemployed.

In this case, Claimant was hired as a part-time worker. The claimant was still employed in her part-time job at the same hours and wages. She was not partially unemployed. The claimant was not taking hours offered by the employer. The claimant is not eligible to receive unemployment insurance benefits.

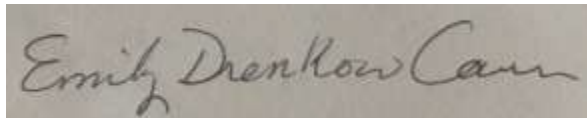
DECISION:

The representative's August 24, 2021, decision (reference 01) is affirmed. The claimant was not able and available for work. Benefits are denied.

The claimant is not able to work and available for work effective February 7, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

REMAND:

The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

A handwritten signature in dark ink on a light-colored background. The signature reads "Emily Drenkow Carr" in a cursive, flowing script.

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

January 14, 2022
Decision Dated and Mailed

ed/kmj