

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL C FROMMELT
Claimant

APPEAL 21A-UI-17084-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 HILLS BREWING CO LLC
Employer

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

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 30, 2021 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits because he was still working on call or part-time and the employer was not offering the same pattern of employment as in the base period. The parties were properly notified of the hearing. A telephone hearing was held on September 24, 2021. The claimant did not participate. The employer participated through witness Jeremy Hall. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on October 31, 2017 as a part-time cook at the employer's restaurant. His hours varied based upon business needs. He was never guaranteed to work a certain number of hours per week. Claimant filed an original claim for unemployment insurance benefits effective March 21, 2021. At that time, claimant was still employed at his part-time job working as a cook. Claimant's wage history consists of only part-time hours. He permanently separated from employment on or about June 19, 2021. The separation from employment issue will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.4(3) provides:

Required Findings.

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".

Iowa Code § 96.1A(37) provides as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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 § 96.7(2)a(2)a provides:

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.

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.

Because claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide the same employment and the claimant is currently employed under the same hours and wages as contemplated when he was hired, he is not considered partially unemployed. Further, the claimant has failed to establish that he has been able to and available for work pursuant to Iowa Code § 96.4(3).

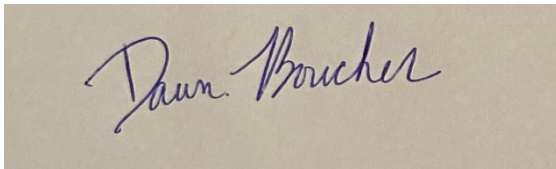
Benefits are denied effective March 21, 2021 and continuing until the claimant establishes that he is able to and available for work and is totally, partially, or temporarily unemployed. Because benefits are denied, no charges shall accrue to the employer's account.

DECISION:

The July 30, 2021 (reference 01) decision is reversed. Claimant is not totally, partially, or temporarily unemployed as he was still employed in his part-time job for the same hours and wages as his original contract of hire. Claimant has failed to establish that he is able to and available for work. Benefits are denied effective March 21, 2021 and continuing until the claimant establishes that he is totally, partially, or temporarily unemployed and that he meets all other eligibility requirements.

REMAND:

The issue of whether the claimant's permanent separation from employment on or about June 19, 2021 is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

September 28, 2021
Decision Dated and Mailed

db/kmj