

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LEIDIANA R ACOSTA FIGUEREDO**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 20A-UI-15859-DZ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/19/2020**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
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 § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Leidiana R Acosta Figueredo, the claimant/appellant, filed an appeal from the November 19, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2021. Ms. Figueredo participated and testified. The employer did not participate. Official notice was taken of the administrative record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Figueredo began working for employer, a base period employer, on October 21, 2019. She works as a full-time production worker. Her hourly pay is \$17.20.

On July 25, 2020, Ms. Figueredo was feeling sick so the employer sent her home. Ms. Figueredo was still feeling sick on July 27 so she called in to work and got tested for COVID-19. Ms. Figueredo tested negative. Ms. Figueredo took another COVID-19 test and tested negative again. On July 30, Ms. Figueredo attempted returned to work. She tried using her access card to enter the building but the card did not work. Ms. Figueredo went home and called human resources and another number she had for the employer to try to figure out what was going on but no one answered. She called back several times for three days but was never able to speak with anyone from the employer. Because her access card no longer worked and the employer never communicated with her after July 15, Ms. Figueredo took that to mean that the employer had let her go.

Ms. Figueredo was paid for her work for the week of July 25. Ms. Figueredo started a new job on January 25, 2021 at GBN in Nebraska. Ms. Figueredo filed her claim for benefits effective July 19, 2020, and the weekly benefit amount is \$493.00.

The issue of Ms. Figueredo's separation from employment has not yet been determined by the Benefits Bureau of Iowa Workforce Development.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that Ms. Figueredo is totally unemployed and able to and available for work effective July 26, 2020 and this employer is not relieved of benefit charges.

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.

Ms. Figueredo is totally unemployed and able to and available for work effective July 26. Ms. Figueredo did not work and she was not paid after July 25. Ms. Figueredo worked all but one day the week of July 19-25 and would have earned more than her weekly benefit amount plus \$15.00. Benefits are allowed as long as she is otherwise eligible. Since the employer is not offering Ms. Figueredo the same wages and hours as in the base period contemplated at hire, benefit charges shall be made to its account.

**DECISION:**

The November 19, 2020, (reference 01) unemployment insurance decision is modified in favor of appellant, Ms. Figueredo. Ms. Figueredo was totally unemployed and able to and available for work effective July 26, 2020. Benefits are allowed, provided she is otherwise eligible. The employer's account shall be charged.

**REMAND:**

The issue of Ms. Figueredo's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

February 17, 2021  
Decision Dated and Mailed

dz/kmj