

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAYLOR L CONNELLY
Claimant

D OF S FOODS INC
Employer

APPEAL 20A-UI-04581-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – 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
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

D of S Foods (employer) appealed a representative's May 14, 2020, decision (reference 01) that concluded Taylor Connelly (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Kristopher Chamberlain, Area Supervisor. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work.

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 on May 13, 2015, as a full-time shift manager. She worked varied hours and was paid \$16.25 per hour.

She filed her claim for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$433.00. For the week ending April 4, 2020, the claimant reported she earned \$520.00. The employer's records show that she earned \$541.45. The claimant received no unemployment insurance benefits. The claimant worked all the hours the employer offered. She did not apply for unemployment insurance benefits after the week ending April 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not able and available for work as of March 29, 2020.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 96.19, 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 section 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.

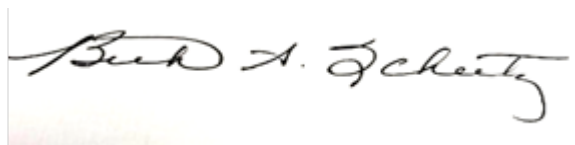
c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 hired as a full-time worker. The employer certified that her hours were not reduced by the employer. She was not unemployed after March 29, 2020. She was not able and available for work after March 29, 2020, because she was working full-time for the employer. Benefits are denied.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The representative's May 14, 2020, decision (reference 01) is reversed. The claimant was not able and available for work as of March 29, 2020. She is not unemployed. Benefits are denied.



Beth A. Scheetz
Administrative Law Judge

June 25, 2020
Decision Dated and Mailed

bas/scn