

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MINDY DANIELSON**  
Claimant

**APPEAL NO. 20A-UI-09700-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**2506 TONES LLC**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (1R)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 6, 2020, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 29, 2020. Claimant participated personally. Employer participated by Jeremy Murray.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant currently works for 2506 Tones, a base period employer, part time but not under the same terms and conditions as contemplated throughout her time of employment. Claimant was originally hired in July to work a couple days a week as a housekeeper, but very soon thereafter she began working Monday through Friday from 8:00 – 2:30. Claimant worked this schedule until February of 2020.

In February claimant experienced a difficult scene in a hotel where she worked. She was able to take a couple weeks off from work after the event. Then Covid concerns struck Iowa, and schools were dismissed. Claimant has a special needs son and he needs to be with someone at all times. While in school claimant's son is watched, but outside of school claimant cannot afford the high cost care her son requires. Claimant made the choice to reduce or totally eliminate her hours such that she could care for her son who was not in school.

Employer stated at this time that there were hours available over and above the hours that claimant worked. Employer stated both that employees were asked to work on call hours, and that they could not fill all the necessary hours during the Covid.

Claimant has been found to be eligible for PUA benefits as of August 2, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed for the time period between March 15, 2020 and August 1, 2020 as claimant was not able and available to work the established schedule she'd worked for many months.

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.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant has removed herself from the employment hours she'd been working, claimant is not considered partially unemployed. Benefits are denied from the period between March 15, 2020 and August 1, 2020.

This matter will be remanded to the benefits bureau for a calculation of overpayment of state and federal benefits.

This matter will be remanded to the fact finder for a determination as to whether this decision affects the period of time for which claimant is eligible to receive PUA benefits.

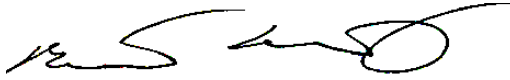
*Note to Claimant:* Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. **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 August 6, 2020, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied for the period between March 15, 2020 and August 1, 2020.

This matter will be remanded to the benefits bureau for a calculation of overpayment of state and federal benefits.

This matter will be remanded to the fact finder for a determination as to whether this decision affects the period of time for which claimant is eligible to receive PUA benefits.



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Blair A. Bennett  
Administrative Law Judge

September 30, 2020  
Decision Dated and Mailed

bab/scn