

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARLA J WINTERINK**  
Claimant

**APPEAL 21A-UI-13115-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TAHER INC**  
Employer

**OC: 03/21/21**  
**Claimant: Appellant (4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 26, 2021, (reference 01) unemployment insurance decision that denied benefits because she worked enough hours to be considered employed and removed from the labor market. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2021. Claimant Carla J. Winterink participated and testified. Employer did not register for the hearing and did not participate. Claimant's Exhibits A and B were received. The administrative law judge took official notice of the administrative file.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective March 21, 2021?  
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: The claimant has been employed full time as a head cook at Taher, Inc. since August 20, 2020.

Claimant was hired to work 40 hours per week and earns \$11.00 per hour. (Exhibit A) Claimant worked full time hours, but in September 2020, her hours were reduced. Instead of working 40 hours per week, she works approximately 25-30 hours per week. Claimant had no restrictions on working and would work more hours if they were made available to her.

Claimant claimed the following wages for the following weeks:

Week Ending	Wages Claimed
March 27	322.00
April 3	420.00
April 10	266.00
April 17	392.00
April 24	378.00
May 1	322.00
May 8	322.00

An Iowa Workforce Development representative's decision dated July 12, 2021, (reference 02) allowed benefits effective May 30, 2021, as it found claimant was able to and available for work. That decision has not been appealed and is not addressed in this decision.

The issue of whether claimant was able to and available for work during the prior claim year effective March 22, 2021, has not been adjudicated by the Benefits Bureau of Iowa Workforce Development.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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".

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits effective March 21, 2021. She is not totally or temporarily unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be working less than his or her regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* Claimant's weekly benefit amount plus fifteen dollars is \$298.00. Any week claimant earned more than \$298.00 in gross wages she is not eligible for benefits.

Claimant earned greater than \$298.00 for the two weeks ending March 27 and April 3, 2021, and for the four-week period ending May 8, 2021. She therefore earned more than her weekly benefit amount plus fifteen dollars. She is therefore not considered unemployed and benefits are denied for this period.

Claimant earned \$266.00 for the week ending April 10, 2021. This is less than her weekly benefit amount plus fifteen dollars. Claimant was partially unemployed and eligible for benefits during this period.

The issue of whether claimant was partially unemployed during the prior claim year, effective March 22, 2020, will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

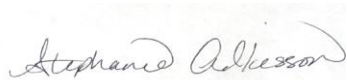
**DECISION:**

The May 26, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was partially unemployed during the one-week period ending April 10, 2021, and is able to and available for work; therefore, benefits are allowed during that period provided claimant is otherwise eligible.

Claimant was not partially unemployed during the two-week period between March 21, 2021 and April 3, 2021 and the four-week period between April 11, 2021 and May 8, 2021. Benefits are denied during these periods.

**REMAND:**

The issue of whether claimant was partially unemployed during the previous claim year effective March 22, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Stephanie Adkisson  
Administrative Law Judge  
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August 13, 2021  
Decision Dated and Mailed

sa/mh