

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE MCDANIEL

Claimant

APPEAL 21A-UI-12329-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THRIVE TOGETHER LLC

Employer

OC: 03/14/21

Claimant: Respondent (4)

Iowa Code § 96.19(38) – 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:

Jesse McDaniel, the claimant/appellant, filed an appeal from the May 6, 2021, (reference 02) unemployment insurance decision that denied benefits as of March 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2021. Mr. McDaniel participated and testified. The employer did not register for the hearing and did not participate. Official notice was taken of the administrative record.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. McDaniel began working for the employer, a base period employer, April 23, 2013. He works as a full-time cook. He is paid \$15.00 per hour.

As of March 14, 2021, the employer had reduced Mr. McDaniel's hours to about 15-20 hours per week due to the COVID-19 pandemic. Mr. McDaniel returned to working full-time hours on, or about, April 25, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge Mr. McDaniel is partially unemployed from March 14, 2021 through April 24, 2021.

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) provide:

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.

In this case, Mr. McDaniel is partially unemployed from March 14, 2021 through April 24, 2021. His hours were reduced due to the COVID-19 pandemic. Mr. McDaniel has no other base-period wages. Partial benefits are allowed as long as he is otherwise eligible.

The employer continuously offered Mr. McDaniel the same wages but reduced his hours because the COVID-19 pandemic led to less available work. Although the employer was not offering Mr. McDaniel the same employment at the time he was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment if the claim was filed before June 12, 2021. Mr. McDaniel's claim was filed effective March 14, 2021.

DECISION:

The May 6, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant, Mr. McDaniel. Mr. McDaniel is partially unemployed from March 14, 2021 through April 24, 2021. Benefits are allowed during these weeks. The employer is relieved of benefit charges for these weeks.



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

July 30, 2021
Decision Dated and Mailed

dz/kmj