

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE CONNETT
Claimant

CSOI CORP
Employer

APPEAL 20A-UI-11802-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On September 22, 2020, Jamie Connett (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 17, 2020 (reference 02) that denied benefits as of April 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed.

A telephone hearing was held on November 17, 2020. The parties were properly notified of the hearing. Claimant participated personally. CSOI Corp (employer/respondent) participated by Store Manager Lauren Anderson.

Employer's exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on November 21, 2017. Claimant was employed full-time as an assistant manager until March 22, 2020. Claimant resigned at that time to take another job. However, claimant told employer she would still be available for on-call work on Monday and Tuesday mornings if help was needed. Claimant occasionally performed work for the employer over the next couple months. The last time claimant performed work for employer was May 8,

2020. Employer removed claimant from its list of employees on June 8, 2020, because claimant had not performed work in a month and employer believed it was unlikely it would have future work for claimant, given her limited availability.

Claimant resigned to take another job at a tanning salon. However, claimant never performed work in that job. The salon was closed for some time due to the pandemic and business never rebounded to a point where claimant's help was needed. Despite being available all the time because of the salon job falling through, claimant did not notify employer of her increased availability. Claimant has been searching for employment since separating from employer.

The issue of claimant's separation from employment has not yet been the subject of a fact-finding interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated September 17, 2020 (reference 02) that denied benefits as of April 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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 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.

Claimant is not eligible for benefits from the date of filing and continuing until the separation from employer on June 8, 2020, as she was still employed by employer in an on-call capacity at that time and did not make herself available for increased work. Claimant is eligible for benefits from the date of separation to present, as she was no longer attached to employer and was searching for work.

However, the issue of claimant's separation from employment must be remanded to the Benefits Bureau for an investigation and decision.

DECISION:

The decision dated September 17, 2020 (reference 02) that denied benefits as of April 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.

REMAND:

This matter is remanded to the Benefits Bureau for an initial investigation and determination on the separation issue, with proper notice and right of appeal to be provided.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 24, 2020
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.