

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISHA N SIMON**  
Claimant

**APPEAL NO. 20A-UI-05223-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (2)**

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  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 29, 2020, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 30, 2020. Claimant participated personally. Employer participated by Iver Heier.

**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?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

The claimant currently works for Kwik Trip, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire.

Claimant filed this matter although she hadn't originally been missing any of her normal hours. At or around the time of filing the appeal, claimant informed employer that she'd been near someone who'd tested positive for Covid-19. Claimant did not test positive and did not state that she could not be at work. Employer ordered claimant not to come to work for the next

seven days although claimant remained able and available to do so. Claimant was not allowed to work for the days of June 3-10, 2020.

Claimant has not received state unemployment benefits in this matter.

Claimant has not received Federal Pandemic Unemployment Compensation benefits in this matter.

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

For the reasons that follow, the administrative law judge concludes the claimant was temporarily unemployed.

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.

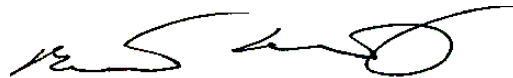
Because the claimant was not allowed to work at her regular job for the regular hours she'd worked for years although she was able and available for work, claimant is temporarily unemployed. Benefits are allowed for the period between June 3-10, 2020.

Claimant has not received state unemployment benefits in this matter.

Claimant has not received Federal Pandemic Unemployment Compensation benefits in this matter.

**DECISION:**

The May 29, 2020, reference 02, decision is reversed. The claimant was temporarily unemployed for the period between June 3-10, 2020 and benefits are allowed, provided claimant is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

July 9, 2020  
Decision Dated and Mailed

bab/scn