

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDJELANI SULA
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 21A-UI-05400-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 4/5/20
Claimant: Appellant (1R)

Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2021. Claimant participated personally. Employer participated through Jessica Wade.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to work and available for work?
Is claimant still employed at the same hours and same wages?
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: Claimant began working for employer on August 24, 2015. At the end of her employment she was a cashier working part-time. She missed work in September and October 2020 but used available paid leave. Claimant indicated to the employer that she was unable to return due to a lack of childcare. On November 5, 2020 she was placed on unpaid leave of absence. Eventually claimant was given two weeks to return to work as her unpaid leave of absence was being ended. Claimant failed to return to work because she couldn't find child care. The employer had work available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is considered to be partially unemployed during the time in question.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant was paid for much of the months of September and October 2020 through the use of paid time off, and as such received wages. She was not totally unemployed. During her unpaid time off claimant, was still employed at the same hours and wages but she simply was choosing not to work for personal reason of not finding adequate child care.

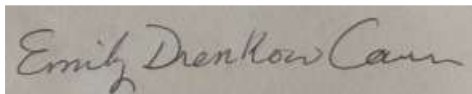
The claimant was still employed during the time in question, and received wages. She was as such not totally or partially unemployed.

DECISION:

The February 10, 2021 (reference 01) unemployment insurance decision is affirmed. Benefits are denied.

REMAND:

The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 03, 2021
Decision Dated and Mailed

Ed/ol

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>