

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARGARET I ELLIS**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL NO. 20A-UI-09039-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

Margaret Ellis filed a timely appeal from the July 22, 2020, reference 01, decision that denied benefits effective April 26, 2020, based on the deputy's conclusion that Ms. Ellis was on a leave of absence that she requested and the employer approved, that she was voluntarily unemployed, and that she was unavailable for work. After due notice was issued, a hearing was held on September 15, 2020. Ms. Ellis participated. Monica Dyar represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of April 26, 2020 through May 30, 2020.

Whether the claimant was on a leave of absence during the period of April 26, 2020 through May 30, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of April 26, 2020 through May 30, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Margaret Ellis is employed by West Liberty Foods, L.L.C. on a full-time basis. Ms. Ellis established an original claim for benefits that was effective April 26, 2020. Iowa Workforce Development set her weekly benefit amount at \$478.00. Ms. Ellis established the employer did not allow her to work her full-time hours during the week of April 26, 2020 through May 2, 2020. The employer had implemented a CDC-recommended employee screening process to hinder the spread of COVID-19 in the workplace. They took the temperature of arriving employees and declined entrance to any employee whose temperature exceeded 100.4. On Monday, April 27, 2020, the employer measured Ms. Ellis's temperature as exceeding 100.4 and declined entrance to the workplace. Ms. Ellis did not feel ill and was prepared to report for work. Under the employer's COVID-19 policy, the employer barred Ms. Ellis from returning to the workplace for 72 hours. Ms. Ellis remained able, ready and willing to work throughout the week. The employer allowed

Ms. Ellis to return to work on Thursday, April 30, 2020. Ms. Ellis worked that shift and another shift on Friday, May 1, 2020. However, when Ms. Ellis reported for work on Saturday, May 2, 2020, the employer once again measured her temperature as exceeding 100.4 and declined entry. Once again, Ms. Ellis did not feel ill and was prepared to report for work. The employer barred Ms. Ellis from the workplace through Monday, May 4, 2020 and then allowed her to return to the employment on Tuesday, May 5, 2020. Ms. Ellis then worked the rest of her scheduled hours for that week and for the next three weeks.

Ms. Ellis's wages for the week that ended May 2, 2020 totaled \$393.04. This included a day's pay for Monday, April 27, 2020, the first day the employer sent Ms. Ellis home and Ms. Ellis' wages for Thursday and Friday of that week.

Ms. Ellis's wages for the weeks that ended May 9, 16, 23, and 30, 2020 exceeded her weekly benefit amount plus \$15.00.

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

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 Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

The evidence in the record established that Ms. Ellis was able to work, available for work, but partially unemployed during the week that ended May 2, 2020. Ms. Ellis was available for full-time work that week, but the employer only provided part-time hours. Ms. Ellis' wages for the week did not exceed her weekly benefits amount plus \$15.00. Ms. Ellis is eligible for benefits for the week that ended May 2, 2020, provided she is otherwise eligible. During the week that ended May 9, 2020, Ms. Ellis was able to work, available for work, but not partially unemployed within the meaning of the law. Though the employer only offered four days of work that week, Ms. Ellis's wages for the week exceeded her weekly benefit amount plus \$15.00. Ms. Ellis is not eligible for benefits for the week that ended May 9, 2020. Ms. Ellis continued to be able to work through the week that ended May 30, 2020, after which she discontinued her claim for benefits. At no point during the period of April 26, 2020 through May 30, 2020 was Ms. Ellis on a leave of absence. Because Ms. Ellis worked full-time hours during the weeks that ended May 16, 23 and 30, 2020, she cannot be deemed unemployed those weeks, does not meet the "availability" requirement, and is not eligible for benefits for those three weeks.

In response to the economic impact of the COVID-19 pandemic, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for the benefits paid to the claimant for the week that ended May 2, 2020.

**DECISION:**

The July 22, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant was able to work, available for work, and partially unemployed during the week that ended May 2, 2020. The claimant is eligible for benefits for the week that ended May 2, 2020, provided she meets all other eligibility requirements. The claimant was able to work, available for work, but not partially unemployed during the week that ended May 9, 2020. The claimant is not eligible for benefits for the week that ended May 9, 2020. The claimant was employed full-time and therefore did not meet the unemployment insurance availability requirement during the weeks that ended May 16, 23, and 30, 2020 and is not eligible for benefits for those three weeks. In light of the COVID-19 basis for the claim, the employer's account will not be charged for benefits paid to the claimant for the week that ended May 2, 2020.



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James E. Timberland  
Administrative Law Judge

September 18, 2020  
Decision Dated and Mailed

jet/sam