

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEAH BROWER
Claimant

APPEAL 21A-UI-12052-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BUTCHERS VEGETABLES LLC
Employer

**OC: 03/21/21
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:

The Butcher's Vegetables LLC, the employer/appellant, filed an appeal from the April 26, 2021, (reference 01) unemployment insurance decision that allowed benefits as of March 21, 2021. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2021. The employer participated through Teresa Butcher. Ms. Brower participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is Ms. Brower 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: Ms. Brower began working for the employer, a base period employer, in October 2019. She works as a part-time cook and her schedule is Monday through Friday from 11:00 a.m. to 2:00 p.m. She is paid \$9.00 per hour.

Due to the COVID-19 pandemic, the employer's closed its business to in-person dining and only offered curbside pickup. Ms. Brower's hours were reduced as of March 21, 2021. The employer opened to in-person dining outdoors sometime in April 2021 and reopened in-person indoor dining in late May 2021. Ms. Brower went back to working her usual hours as of May 23, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge Ms. Brower is partially unemployed from March 21, 2021 through May 22, 2021 and she is still employed with this employer at the same hours and wages as in her original contract of hire as of May 23, 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.

Ms. Brower is partially unemployed from March 21, 2021 through May 22, 2021. Her hours were reduced during this time period due to lack of work because of COVID-19. Ms. Brower has no other base-period wages. Partial benefits are allowed from March 21, 2021 through May 22, 2021, as long as she is otherwise eligible.

The employer continuously offered Ms. Brower the same wages but reduced her hours because the COVID-19 pandemic led to less available work. Although the employer was not offering Ms. Brower the same employment at the time she 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. Ms. Brower's claim was filed effective March 21, 2021.

As of May 23, 2021, Ms. Brower is still employed with this employer at the same hours and wages as in her original contract of hire. Benefits are denied as of May 23, 2021.

DECISION:

The April 26, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant, the employer. Ms. Brower is partially unemployed from March 21, 2021 through May 22, 2021. Benefits are allowed during these weeks. The employer is relieved of benefit charges for these weeks.

Effective May 23, 2021, Ms. Brower is still employed with this employer at the same hours and wages as in her original contract of hire. Benefits are denied as of May 23, 2021.



Daniel Zeno
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July 28, 2021
Decision Dated and Mailed

dz/kmj