

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**NICOLE I BOHR**  
Claimant

**JACKSON HEIGHTS GOLF COURSE**  
Employer

**APPEAL NO. 21A-UI-16683-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/29/20**  
**Claimant: Respondent (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 20, 2021, reference 01, decision that allowed benefits for the period beginning November 28, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on September 21, 2021. Claimant, Nicole Bohr, did not provide a telephone number for the appeal hearing and did not participate. Cathy Dietzenbach represented the employer and presented additional testimony through Wanda Cole. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, NMRO, WAGE-A, and the July 20, 2021, reference 04, decision.

**ISSUES:**

Whether the claimant was able to work and available for work during the period between November 29, 2020 and April 3, 2021.

Whether the claimant was partially and/or temporarily unemployed during the period between November 29, 2020 and April 3, 2021.

Whether the employer's account may be charged for benefits for the period between November 29, 2020 and April 3, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Nicole Bohr, began her employment with Jackson Heights Golf Course on October 8, 2020. Wanda Cole, Clubhouse Manager, hired the claimant to work as a part-time seasonal clubhouse attendant and bartender. Ms. Cole was the claimant's supervisor. The golf season runs from April to October. At the time the claimant began her employment, there was a month or less left in the 2020 golf season. The claimant's wage in 2020 was \$8.00 an hour. The claimant worked four days in October 2020 before the golf season ended. The claimant worked four hours on October 8, 4.5 hours on October 9, 3.6 hours on October 13, and five hours on October 21, 2020. The claimant's total wages for those four days were \$136.80. Before the 2020 golf season ended, the employer asked the claimant whether she was interested in returning for the 2021 golf season and the claimant indicated she was interested in returning.

From the end of the 2020 golf season until April 4, 2021, the employer did not have work for the claimant. The claimant returned on April 5, 2021 to start additional part-time employment with the golf course at the start of the 2021 golf season. The claimant had other employment during the fourth quarter of 2020 and the first and second quarters of 2021.

The claimant established an original claim for benefits that was effective November 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$378.00. The claimant has not received benefits in connection with the claim. The claimant did not immediately commence making weekly claims. On March 5, 2021, the claimant made weekly claims that included late weekly claims for each of the weeks between November 29, 2020 and February 20, 2021 and a timely claim for the week that ended February 27, 2021. On March 9, 2021, the claimant made a timely weekly claim for the week that ended March 6, 2021. On April 19, 2021, the claimant made weekly claims that included late weekly claims for the weeks between March 7, 2021 and April 3, 2021. When the claimant made her weekly claims for the period in question, she reported wages as follows:

WEEK ENDING	WK ST	AB AV	RF OF	ER CT	IN PR	WAGES
04/03/21	S	Y	N	2	N	210
03/27/21	S	Y	N	1	N	240
03/20/21	S	Y	N	0	N	310
03/13/21	S	Y	N	2	N	265
03/06/21	S	Y	N	2	N	217
02/27/21	S	Y	N	0	N	130
02/20/21	S	Y	N	0	N	280
02/13/21	S	Y	N	0	N	247
02/06/21	N	Y	N	2	N	0
01/30/21	N	Y	N	2	N	0
01/23/21	N	Y	N	3	N	0
01/16/21	S	Y	N	2	N	120
01/09/21	S	Y	N	2	N	160
01/02/21	S	Y	N	0	N	180
12/26/20	S	Y	N	2	N	280
12/19/20	S	Y	N	0	N	260
12/12/20	S	Y	N	0	N	250
12/05/20	S	Y	N	0	N	325
11/28/20	S	Y	N	0	N	325
11/21/20	S	Y	N	0	N	220
11/14/20	S	Y	N	0	N	250

On July 20, 2021, an Iowa Workforce Development Benefits Bureau deputy issued two decisions regarding the claimant and Jackson Heights Golf Course. The reference 01 decision allowed benefits for the period beginning November 29, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. The reference 04 decision denied benefits for the period beginning April 4, 2021, based on the deputy's conclusion that the claimant was at that point employed with the golf course under the same hours and wages as in the original contract of hire and, therefore, was not partially unemployed within the meaning of the law.

#### **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:

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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Code section 96.1A(37) 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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The employer did not have the same part-time employment for the claimant during the period of November 29, 2020 through April 3, 2021 as the employer had for the claimant at the start of the employment. Accordingly, the employer's account may be charged for benefits for that period. In addition, the claimant would be eligible for benefits for that period, provided she met all other eligibility requirements.

**DECISION:**

The July 20, 2021, reference 01, decision is affirmed. The employer did not have the same part-time employment for the claimant during the period of November 29, 2020 through April 3, 2021 as the employer had for the claimant at the start of the employment. Accordingly, the employer's account may be charged for benefits for that period. In addition, the claimant would be eligible for benefits for that period, provided she met all other eligibility requirements.



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James E. Timberland  
Administrative Law Judge

September 23, 2021  
Decision Dated and Mailed

jet/scn