

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHLEEN L KAISER
Claimant

APPEAL NO. 21A-UI-07330-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

OC: 05/03/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Kathleen Kaiser, filed a timely appeal from the March 8, 2021, reference 02, decision that denied benefits effective January 10, 2021, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on May 20, 2021. Claimant participated. Thomas Kuiper of Equifax represented the employer and presented testimony through Benjamin Gamble. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning January 10, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning January 10, 2021.

Whether the employer's account may be charged for benefits for the period beginning January 10, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an additional claim for benefits that was effective January 10, 2020. For the last 16 years, the claimant has been employed by Kohl's Department Stores, Inc. as a part-time Point of Sale (POS)/cashier at the employer's retail store in Dubuque. Until the COVID-19 pandemic arrived in March 2020, the claimant consistently worked about 20 hours per week. The employer temporarily closed the Dubuque store on March 19, 2020. The employer reopened on May 18, 2020. Since that time, the employer had followed all Centers for Disease Control guidance for preventing community spread of COVID-19. In addition to a city mask mandate, the employer had its own mask mandate. The employer installed Plexiglas at the check-out lanes to protect the claimant, other employees and customers. The employer provided hand sanitizer for the claimant to use. The employer adhered to social distancing. Since the reopening, the employer has had the claimant's usual 20 hours per week available for the claimant. The claimant elected re delay her return to work to July 2020. Since returning to

the employment, the claimant has elected to restrict her availability for work to 12 hours per week. The claimant has been concerned about contracting COVID-19. The employer has repeatedly requested that the claimant return her availability to 20 hours per week, but the claimant has declined to do that. The claimant told the employer she wanted to continue with the reduced availability so that she could continue to receive unemployment insurance benefits. Even after the claimant received her second COVID-19 vaccination in March 2021, she continued to restrict her availability for work.

The claimant established an original claim for benefits that was effective May 2, 2020 and an additional claim for benefits that was effective January 10, 2021. The present appeal concerns the period involved in the additional claim. The claimant made weekly claims for each of the weeks between January 10, 2021 and May 1, 2021, when her claim year expired. The claimant's weekly benefit amount was set at \$202.00. This employer is the primary base period employer, but there is one other. For the weeks between January 10, 2021 and March 6, 2021, the claimant reported wages that did not exceed her weekly benefit amount plus \$15.00. For the weeks that ended March 13 and March 20, 2021, the claimant reported wages that exceeded her weekly benefit amount plus \$15.00. For the week that ended March 27, 2021, the claimant reported wages that did not exceed her weekly benefit amount plus \$15.00. For the weeks between March 28, 2021 and April 24, 2021, the claimant reported wages that exceeded her weekly benefit amount plus \$15.00. For the week that ended May 1, 2021, the claimant reported wages that did not exceed 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:

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(16) and (26) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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 claimant has not met the availability requirement since January 10, 2021 and has not been partially unemployed since that time. Though the claimant has a long established history of working 20 hours per week for this employer, the claimant has elected since the employer's

reopening in May 2020 to unduly restrict her availability to 12 hours per week. This is despite the employer having additional work hours available and despite the employer's compliance with CDC guidelines for preventing community spread of COVID-19. The claimant is not eligible for benefits for the period beginning January 10, 2021. The employer's account shall not be charged for benefits for the period of January 10, 2021 through May 1, 2021, the end of the benefit year.

This matter will be remanded to the Benefits Bureau for a determination of whether the claimant was available for work and/or partially unemployed in the new claim year that started May 2, 2021.

DECISION:

The March 8, 2021, reference 02, decision is affirmed. Since January 10, 2021, the claimant has not been available for work within the meaning of the law and has not been partially unemployed within the meaning of the law. Benefits are denied effective January 10, 2021. The employer's account shall not be charged for benefits for the period of January 10, 2021 through May 1, 2021, the end of the benefit year.

This matter is **remanded** to the Benefits Bureau for a determination of whether the claimant was available for work and/or partially unemployed in the new claim year that started May 2, 2021.



James E. Timberland
Administrative Law Judge

May 28, 2021
Decision Dated and Mailed

jet/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits that you must repay.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.