

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JERRY J GRIFFITH**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 20A-UI-06852-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.19(38) – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On June 17, 2020, Jerry Griffith (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 15, 2020 (reference 01) that denied benefits.

A telephone hearing was held on July 29, 2020. The parties were properly notified of the hearing. Claimant participated personally. Fareway Stores Inc (employer/respondent) participated by VP of Human Resources Theresa McLaughlin.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on November 10, 2016. Claimant is still employed by employer as a truck driver. Claimant's position is essentially an on-call position. Claimant would contact employer when he was available for work to see if employer had any work. Claimant had no obligation to work certain shifts and employer had no obligation to offer a certain number of hours or shifts. Claimant last contacted employer for shifts on or about April 25, 2020. Claimant was offered shifts on or about June 22, 2020, but declined those shifts.

Claimant was temporarily laid off from his regular employer, Annett Holdings Inc., on or about April 26, 2020. He returned to work there on or about July 1, 2020. Claimant typically worked 18-24 hours per week at this employer.

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

For the reasons that follow, the June 15, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED in favor of appellant.

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 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 Code section 96.7(2)a(2) 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.

The administrative law judge finds claimant was partially unemployed from the benefit week ending May 2, 2020, and continuing through the benefit week ending July 4, 2020. This is because claimant was separated from his regular job with Annett Holdings Inc. during this time. However, he was not totally unemployed during this time, as he was still employed by employer in the same way during this time, essentially in an on-call capacity. As such, claimant is eligible for partial unemployment benefits during this time, and employer's account is not subject to charge. Because claimant was partially unemployed, he was not required to apply for or accept work during that period. Claimant was available for employment during that time.

**DECISION:**

The June 15, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED in favor of appellant. Claimant is partially unemployed from the benefit week ending May 2, 2020 and continuing through the benefit week ending July 4, 2020. Employer's account is not subject to charge.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

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August 7, 2020  
Decision Dated and Mailed

abd/sam