

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DHRUBA B ARYAL
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL NO. 21A-UI-05270-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (4R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Dhruba Aryal, filed a timely appeal from the February 10, 2021, reference 02, decision that denied benefits effective May 10, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on April 20, 2021. The claimant participated and presented additional testimony through Abhishek Aryal. Jessica Wade represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. Nepali-English interpreter Anita Shrestha of CTS Language Link assisted with the hearing.

ISSUES:

Whether the claimant was able to work and available for work during the period of May 10, 2020 through July 18, 2020.

Whether the claimant was on a leave of absence during the period of May 10, 2020 through July 18, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of May 10, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by the University of Iowa as a full-time Cook I at a residence hall. The claimant's usual work hours are 6:00 a.m. to 2:30 p.m. five days a week. On May 15, 2020, the employer provided notice to the claimant that there would be no work for the claimant from May 18, 2020 through June 14, 2020, that the time off would be without pay, and that the claimant was expected to return to the employment on Monday, June 15, 2020. The claimant had not requested to go off work and was at all relevant times available for full-time work. The claimant's hourly wage was at all relevant times \$14.64.

The claimant has also at all relevant times had a second, part-time, supplemental employment with Walmart. The claimant's hourly wage at Walmart was at all relevant times \$13.45.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective May 10, 2020. Iowa Workforce Development set the weekly benefits for regular benefits at \$452.00. The claimant made weekly claims for each week between May 10, 2020 and July 18, 2020.

During the week that ended May 16, 2020, the claimant worked a 40-hour work week for which he earned \$585.60.

During the four weeks between May 17, 2020 and June 13, 2020, the University had no work for the claimant and paid no wages to the claimant. During the weeks that ended June 6 and June 13, 2020, the claimant worked eight hours at Walmart for which he earned \$107.60.

During the week that ended June 20, 2020, the claimant returned to work as directed and performed the 19.5 hours of work the University had for him, for which he earned \$285.48 in wages. The claimant also worked eight hours for Walmart, for which he earned \$107.60. The combined gross weekly wages totaled \$393.08.

During the week that ended June 27, 2020, the claimant worked the 16.7 hours the employer had for him and eight hours at Walmart. The combined wages totaled \$352.09 (\$244.49 + \$107.60).

During the week that ended July 4, 2020, the claimant worked the 10.5 hours the University have for work. The University also paid the claimant eight hours in holiday pay. The claimant also worked 8 hours for Walmart. The combined wages totaled \$379.44 (\$153.72 + \$117.12 + \$107.60).

During the week that ended July 11, 2020, the claimant worked the 13.6 hours the University had for him as well as 10 hours at Walmart. The combined wages totaled \$333.60 (\$199.10 + \$134.50).

During the week that ended July 18, 2020, the claimant worked the 15.2 hours the University had for him and eight hours at Walmart. The combined wages totaled \$330.13 (\$222.53 + \$107.60).

The claimant discontinued his claim for benefits following the week that ended July 18, 2020.

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(10) and (23) provides:

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 96.1A(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 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).

During the week that ended May 16, 2020, the claimant was employed full-time, did not meet the "availability" requirement and was neither temporarily or partially unemployed. The claimant would not be eligible for benefits for the week that ended May 16, 2020 even if his weekly claim for that week had been timely.

During the weeks that ended May 23, May 30, June 6 and June 13, 2020, the claimant was able to work, available for work, but temporarily unemployed from the full-time University employment. The claimant is eligible for benefits for each of those weeks, provided he meets all other eligibility requirements. The employer account may be charged for benefits for each of those weeks.

During the week that ended June 20 through the week that ended July 18, 2020, the claimant was partially unemployed from the University employment. During each of those weeks, the claimant remained able to work, available for full-time work, but was partially unemployed from the University employment. The claimant's partial wages did not exceed his \$452.00 weekly benefit amount plus \$15.00. The claimant is eligible for benefits for each of those weeks, provided he meets all other eligibility requirements. The employer account may be charged for benefits for each of those weeks.

During the period of May 10, 2020 through July 18, 2020, the claimant was at no time on a leave of absence that he requested and that the employer approved.

This matter will be remanded to the Benefits Bureau for redetermination of the claimant's benefit amount for the week that ended July 4, 2020 in light of the claimant's underreport for \$317.00 in wages, rather than the correct \$379.00 amount.

DECISION:

The February 10, 2021, reference 02, decision is modified in favor of the claimant/appellant as follows. During the week that ended May 16, 2020, the claimant was employed full-time, was not temporarily or partially unemployed, and was not eligible for unemployment insurance benefits. During the four weeks between May 17, 2020 and June 13, 2020, the claimant was able to work, available for work, temporarily laid off, and eligible for benefits, provided he met all other eligibility requirements. During the five weeks between June 14, 2020 and July 18, 2020, the claimant was able to work, available for work, but partially unemployed. The claimant is eligible for benefits for the period of May 17, 2020 through July 18, 2020, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for the period of May 17, 2020 through July 18 2020.

This matter is **remanded** to the Benefits Bureau for redetermination of the claimant's benefit amount for the week that ended July 4, 2020 in light of the claimant's underreport for \$317.00 in wages, rather than the correct \$379.00 amount.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

April 26, 2021
Decision Dated and Mailed

jet/scn