

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BYRON K TATE

Claimant

FAREWAY STORES INC

Employer

APPEAL 21A-UI-20196-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/18/21
Claimant: Appellant (1R)**

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 § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Byron K Tate, the claimant/appellant, filed an appeal from the September 2, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2021. Mr. Tate participated and testified. The employer participated through Stephanie Rohrer, human resources generalist, and Jim Smith, market manager. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Tate able to and available for work?
Is Mr. Tate temporarily or partially unemployed?
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: Mr. Tate began working for the employer, a base period employer, on April 22, 2002. He worked as a full-time meat cutter. Mr. Tate continuously worked for the employer since his hire date under the same terms and conditions as contemplated at hire.

Mr. Tate was on vacation leave on Monday, July 19, 2021. He was not scheduled to work on Tuesday, July 20. He called-in sick on Wednesday, July 21. His employment ended on July 22, 2021. Mr. Tate filed his claim because his employment ended. The issue of Mr. Tate's separation from employment has not been investigated by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(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.

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 96.7(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.

Mr. Tate was still employed in his job from July 18, 2021, the effective date of his claim, until his job ended on July 22, 2021. The employer continued to offer him the same employment as contemplated at hire until his job ended on July 22, 2021. Benefits are denied from July 18, 2021 through July 21, 2021.

DECISION:

The September 2, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Tate was still employed at the same hours and wage as contemplated at hire from July 18, 2021 through July 21, 2021. Benefits are denied from June 18, 2021 through July 21, 2021.

REMAND:

The issue of Mr. Tate's separation from employment with this employer is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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December 2, 2021
Decision Dated and Mailed

dz/scn