

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEANDRE SHUMATE
Claimant

ELITE STAFFING
Employer

APPEAL 21A-UI-03564-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Elite Staffing LLC., filed an appeal from the January 13, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2021. The claimant, Keandre Shumate, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Chris Nemanny, owner, represented the employer. Kim Luze attended as an observer.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the name of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work effective November 8, 2020?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked on assignment for Royal Canin, full-time, forty hours per week, on the day shift, for \$14.00 per hour. Claimant’s assignment began October 28, 2020. Claimant last performed

work on November 22, 2020. Claimant informed employer on November 30, 2020 that he was not going to continue working because he had a child "on the way" (Employer Exhibit 1). Full-time work was available.

Employer made weekly continued claims for the period of November 8-28, 2020. He reported no work, and no wages each week. Employer reported the following hours each week:

November 8-14, 2020: 14 hours/\$196.00
November 15-21, 2020: 28.63 hours/\$400.82
November 22-28, 2020: 0 hours/\$0.00

Employer stated claimant was not laid off and full-time work was available each week. Employer was unaware why claimant did not work full-time each week. Claimant did not participate in the scheduled telephone hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for unemployment insurance benefits effective November 8, 2020- November 28, 2020. Benefits are denied.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant did not appear for the hearing and meet his burden of proof to show he was able and available for work after effective November 8, 2020.

The undisputed evidence is employer had full-time work available for claimant for the period of November 8-28, 2020 but he did not work all available hours. When employees unreasonably limit their working hours, they are considered to be unavailable for work. Claimant has failed to establish he was able and available for work. Accordingly, the administrative law judge concludes the claimant is ineligible for benefits November 8-28, 2020.

The issue of claimant's unrecorded wages for the period of November 8-28, 2020 is remanded to the Benefits Bureau for an initial investigation and adjustment.

DECISION:

The unemployment insurance decision dated January 13, 2021, (reference 04) is reversed. The claimant is not able and available for work effective November 8, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's unrecorded wages for the period of November 8-28, 2020 is remanded to the Benefits Bureau for an initial investigation and adjustment.

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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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March 31, 2021
Decision Dated and Mailed

jlb/scn