

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BLAKE S CHRISTENSEN
Claimant

COMMUNITY MOTORS COMPANY INC
Employer

APPEAL 20A-UI-12788-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Blake S. Christensen, filed an appeal from the October 2, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2020. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A and B were 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.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to work and available for work effective April 26, 2020?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a full-time student at the University of Northern Iowa. Claimant works part-time as a detailer for this employer, with his availability for Wednesday and Saturday. Claimant was not guaranteed a set number of hours at the time of hire and earned \$10.00 per hour.

Claimant reduced his availability for employer, and also told employer he was uncomfortable performing work for employer during the pandemic due to his father being high risk. Employer reduced claimant’s hours in response. Claimant worked or was paid wages each week he filed a claim for benefits. Claimant permanently separated from employment in June 2020. Claimant believes he separated June 10 or 13, 2020. The issue of claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

Claimant did not take summer school and took online classes for the fall term. Claimant looked for employment and helped his dad. He had no other restrictions to employment.

Claimant began new employment at Dan Deery Toyota effective the week beginning December 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 a totally unemployed 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.

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.

For the period of April 26, 2020 through June 13, 2020: Claimant in this case was hired for part-time work and not guaranteed a set schedule. Therefore, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that a set number of hours will be guaranteed each week.

Thus since the employer continued to provide part-time hours from April 26, 2020 until separation in June 2020, claimant was employed under the same hours and wages as contemplated when he was hired. He is not considered partially unemployed. Benefits are denied.

Effective June 14, 2020: Claimant has established he was able to and available for work as he was totally unemployed until the week of December 6, 2020. Benefits are allowed for this period, provided he is otherwise eligible.

The issue of claimant's permanent separation from this employer during the week ending June 13, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The unemployment insurance decision dated October 2, 2020 (reference 01) is modified in favor of claimant/appellant. The claimant is not able and available for work effective April 26, 2020-June 13, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied for this period. Effective June 14, 2020, claimant is able to and available for work, and therefore eligible for benefits, provided he meets all other requirements.

REMAND:

The issue of claimant's permanent separation from this employer during the week ending June 13, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 12, 2021
Decision Dated and Mailed

jlb/mh

Note to Claimant: This decision denies benefits April 26, 2020 through June 13, 2020. 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 currently 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>.