

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LONDRELL COOPER
Claimant

CG ACQUISITION CO
Employer

APPEAL 21A-UI-04921-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/05/20
Claimant: Appellant (4)**

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 claimant/appellant, Londrell Cooper, filed an appeal from the February 4, 2021 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 15, 2021. The claimant participated. The employer notified the Appeals Bureau it would not be participating in the hearing.

The administrative law judge took official notice of the administrative records. 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:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work effective December 13, 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 opened a claim with an effective date of July 5, 2020. The claimant is a lead team member for the casting team. The claimant reopened his claim during the week of December 13, 2020, anticipating to be laid off. However, he worked his full work week for the week of December 13-19, 2020.

For the week of December 20-26, 2020, claimant worked Monday, Tuesday and Wednesday as he normally would, for 24 hours, as he normally would. He was paid two days of holiday pay for Thursday and Friday. Even though he did not work 40 hours, he was paid as though he had through 24 hours of wages and 16 hours of holiday pay.

For the week of December 27, 2020 through January 2, 2021: Claimant did not perform any work. The employer had a plant shut down for Monday, Tuesday and Wednesday. Claimant was paid holiday pay for Thursday and Friday, for a total of 16 hours. Claimant returned to work on Monday, January 4, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

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 § 96.7(2)a(2)a provides:

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.

(emphasis added).

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

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.

For the period of December 13, 2020 through December 26, 2020: Claimant was paid full-time wages to reflect he worked forty hours, regardless if he actually worked or not. Therefore, he was not unemployed during this period and is not eligible for benefits.

For the week of December 27, 2020 through January 2, 2021: Claimant did not perform work. He was paid 16 hours of holiday pay. Claimant is considered partially unemployed and is allowed partial benefits, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated February 4, 2021, (reference 06) is modified in favor of the claimant/appellant. The claimant was not able and available for work effective December 13-26, 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. Claimant was partially unemployed for the week ending January 2, 2021 and is eligible for partial benefits so long as he meets all other requirements.

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits December 13-26, 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.

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

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

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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April 20, 2021
Decision Dated and Mailed

jlb/kmj