

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRISTAN C DAWSON
Claimant

APPEAL 20A-UI-05447-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLB OF IOWA LC
Employer

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On June 8, 2020, SLB of Iowa, LC (employer) filed an appeal from the May 29, 2020, reference 01, unemployment insurance decision that allowed benefits effective April 5, 2020, because the agency determined Tristan C. Dawson (claimant) was not employed in his same hours and wages as contemplated in the contract of hire but was able to and available for work. After due notice was issued, a telephone hearing was held on July 16, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Karen Beard, Human Resources Manager. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim and wages histories

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 5, 2020?
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?
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 began working for the employer on March 31, 2017 as a part-time associate with varied hours. The claimant filed his claim for benefits effective April 5, 2020 and his weekly benefit amount is \$196. The claimant has worked part-time, varied hours each week since filing his claim for unemployment benefits. He has not filed any weekly claims for benefits since opening his claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues of availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

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 96.19, 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 Code § 96.19(38) 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week following the effective date of his claim. He is not totally unemployed.

The next question is whether he is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position with varying hours. He continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, he is not partially unemployed and is not eligible for regular benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment, the issues of his ability to and availability for work and the chargeability of the employer's account are moot at this time. Additionally, as the claimant has not filed for or received any unemployment insurance benefits to date, the issues of overpayment are moot.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The May 29, 2020, reference 01, unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.



Stephanie R. Callahan
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

src/sam

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. 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.