

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**GEORGE T NAUMAN**  
Claimant

**APPEAL NO. 21A-UI-00313-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF DUBUQUE**  
Employer

**OC: 09/13/20**  
**Claimant: Appellant (2R)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 1, 2020, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on February 5, 2021. Claimant participated personally and with attorney Mark Sullivan. Employer participated by witnesses Gina Noel and Gus Psihoyos.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant currently works for the city of Dubuque, a base period employer, under the same terms and conditions as he'd worked for the past few years. Employer made a decision that many employees would be kept below 1560 hours throughout the year such that they did not have to pay insurance benefits to the employees.

Employer determined how the 1560 hours would be divided through the year. Claimant might be asked to work over 40 hours in a week, and would often work full time throughout the construction season, only to be asked to work 20 or so hours a month during the parts of the year when construction was decreased.

Claimant filed for unemployment when his hours were cut off again this year. At all times since the claimant filed for unemployment, he was able and available to work the full time hours that he worked at other parts of the year. Claimant claimed no wages from the week ending September 19, 2020 through the week ending November 14, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is temporarily unemployed for the four week period between the week ending September 19 and October 10, 2020. This matter will be remanded to the fact finder for a determination as to whether claimant is considered to be furloughed for the rest of the period when claimant was not working.

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 96.19, 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 section 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.

Iowa Admin. Code r. 871-24.23(26) states with particularity that in order to exclude a claimant from unemployment benefits, said employee must not be working on a *workweek* basis. (Italics added for emphasis. In this matter, claimant worked on a reduced workweek basis for many weeks out of the year. Employer's argument that the 1560 hours claimant works every year creates a 'same hours and wages' situation is misplaced. Claimant's hours and wages change dramatically, being eliminated altogether for a good portion of the year, through no fault of the defendant. Employer changes these hours to the advantage of employer, moving claimant from working full time when needed to working very few if any hours when that works to the advantage of employer.

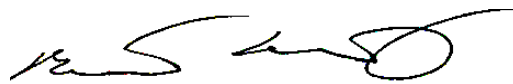
Here, claimant is not partially unemployed as he is not working at all. As such, claimant can only be seen as temporarily unemployed. Claimant's unemployment extended from the week ending September 19, 2020 through the week ending October 10, 2020. Temporary unemployment benefits may only extend for a period of up to four weeks. Iowa Code section 96.19(38)(c). The administrative law judge finds that claimant is temporarily unemployed for the first four weeks when he was out of work. Benefits are allowed for that period.

As for the period of time between October 11, 2020 and November 14, 2020, this matter will be remanded to the fact finder for a determination on claimant's temporary job separation.

**DECISION:**

The December 1, 2020, reference 01, decision is reversed. The claimant is temporarily unemployed from the week ending September 19, 2020 through the week ending October 10, 2020 and benefits are allowed for that period, provided claimant is otherwise eligible.

This matter is remanded to the fact finder for further determination as to claimant's status during the period of time between October 11, 2020 and November 14, 2020.



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Blair A. Bennett  
Administrative Law Judge

February 19, 2021  
Decision Dated and Mailed

bab/scn