

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GUY K MUSUNGAY
Claimant

KIRKWOOD COMMUNITY COLLEGE
EMPLOYER

APPEAL 21A-UI-15483-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 2, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective May 2, 2021 finding that the claimant was not able to work and available for work. After due notice was issued, a telephone hearing was held on September 1, 2021. The claimant participated personally. Attorney Emily Schott represented the claimant. The employer participated through witnesses Sheri Hlavacek and Catherine Berndt. Language Link provided French interpretation services to the claimant. Claimant's Exhibits 1, 2, and 3 were admitted. Employer's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer on May 16, 2012. He was first employed on a part-time basis and then transferred to full-time on August 1, 2013. As of August 1, 2013, he worked full-time as a laundry attendant. He typically worked Monday through Friday each week from 7:00 a.m. to 3:00 p.m. and rotated every other weekend. While claimant's primary position was laundry attendant, the employer listed a secondary position for him as a public space attendant. Claimant rarely worked as a public space attendant since beginning full-time as a laundry attendant.

As of January 4, 2021, claimant's full-time position as a laundry attendant was reduced to a part-time position because of the lingering effects that the COVID-19 pandemic had on the employer's business. See Exhibit 2. Prior to January 4, 2021, the claimant had been on FFCRA leave due to child care issues. As of January 4, 2021, the claimant and Ms. Berndt spoke about his availability to work in the new part-time role. Claimant was told that the weekends (Saturday and Sundays) are the busiest times for the employer and the claimant

agreed that he could work each Saturday and Sunday as his new part-time hour schedule in the laundry attendant position. Claimant was not offered to continue working as a laundry attendance Monday through Friday from 7:00 a.m. to 3:00 p.m.

Claimant filed an original claim for unemployment insurance benefits effective May 2, 2021 when his prior years' claim for benefits had expired. His established weekly amount for benefits during his May 2, 2021 claim year is \$284.00. Claimant has filed weekly-continued claims for benefits since May 2, 2021 and has reported the gross wages he has earned each week. Claimant has earned gross wages for each week in which he has filed weekly-continued claims for benefits. The employer has not offered the claimant any additional hours as a laundry attendance Monday through Friday each week from 7:00 a.m. through 3:00 p.m. Claimant is available to work full-time hours Monday through Friday each week from 7:00 a.m. through 3:00 p.m. as he has full-time daycare available for his minor children.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.4(3) provides:

Required Findings.

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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) provides as follows:

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

37. "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. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual’s weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual’s weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual’s weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual’s weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

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).

Calculation of gross wages earned is covered under the claimant handbook online and can be found at the following website:

<https://www.iowaworkforcedevelopment.gov/continued-eligibility>.

The handbook provides that: “Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if you have not yet received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage.

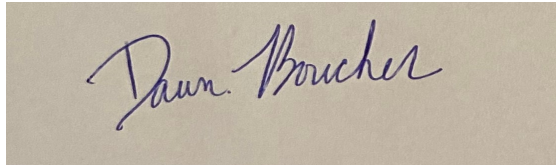
Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings

You should report the full gross amount of earnings and we will calculate any deductions. Deductions and/or earnings are calculated differently depending on the type of income. See the general guidelines on deductibility below.”

Effective May 2, 2021, the claimant was still employed by this employer at his regular job, but working less than the regular full-time week and earning less than his weekly-benefit amount, plus \$15.00. As such, the claimant has been partially unemployed effective May 2, 2021. Benefits are allowed effective May 2, 2021, provided the claimant remains otherwise eligible. The employer's account may be charged for benefits paid.

DECISION:

The July 2, 2021 (reference 01) unemployment insurance decision is reversed. Claimant has been partially unemployed effective May 2, 2021 as he has worked less hours and had earned less than his weekly-benefit amount, plus \$15.00, due to the employer reducing his scheduled shifts from full-time to part-time. Partial unemployment insurance benefits are allowed for the weeks in which the claimant earns less than his weekly-benefit amount, plus \$15.00. The claimant must continue to report all gross wages earned each week in which he files weekly-continued claims for benefits. The employer's account may be charged for benefits paid.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

September 7, 2021
Decision Dated and Mailed

db/kmj