

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS C LAW
Claimant

AUSTADS GOLF INC
Employer

APPEAL 19A-UI-03909-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/13/19
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the February 7, 2019, (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was still employed part-time or working on call whenever hours were available. The parties were properly notified of the hearing. A telephonic hearing was held on June 6, 2019. The claimant, Travis C. Law, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Austad's Golf, Inc., participated through Shawn Oppold, Operations Manager; and Ryan Foster, Store Manager. Employer's Exhibits 1, 2, and 3 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed with Austad's Golf, Inc., part-time as a seasonal sales associate beginning on March 14, 2018. When claimant was hired, he would have been told that his hours would fluctuate depending on the season. Claimant's hours increased beginning in April, when golf season started. Claimant's hours then decreased beginning in October, once golf season was over. This is common throughout the golf industry, and claimant had worked in the golf industry previously.

Claimant began filing his claim for benefits beginning January 13, 2019. At the time, he was still employed as a part-time sales associate. There is a discrepancy between the wages claimant actually received (as documented in Exhibit 2) and the wages claimant reported when filing his weekly claims for benefits. Claimant resigned from his position in April 2019. That separation has not yet been the subject of a fact-finding interview.

The unemployment insurance decision was mailed to the appellant's address of record on February 7, 2019. The appellant did not receive the decision. The first notice of disqualification was the first quarter Statement of Charges dated May 9, 2019. The appeal was sent on May 13, 2019, promptly upon receipt of that Statement of Charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is neither totally nor partially unemployed. Therefore, benefits are withheld.

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.

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 he has claimed benefits. Therefore, 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. This position was seasonal, and claimant was told his hours would fluctuate based on the season. His hours have fluctuated as was the expectation when he was hired. As the claimant was working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

This matter will be remanded for further investigation of claimant's reported wages and his separation from this employer.

DECISION:

The February 7, 2019, (reference 02) unemployment insurance decision is reversed. The appeal was timely filed. Claimant is neither totally nor partially unemployed. Therefore, he is not eligible for benefits through the week ending April 27, 2019. Benefits are withheld.

REMAND:

The issue of whether claimant's separation is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

The issue of whether claimant intentionally under-reported wages is remanded to the Investigations and Recovery Unit of Iowa Workforce Development for further investigation.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn