

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSIAH M WILLIAMS
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 21A-UI-03363-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 5/10/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.7(2)a(2) –
Iowa Code § 96.19(38) – Total and partial unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 12, 2021 (reference 05) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was still employed for the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on March 23, 2021. The claimant, Josiah Williams, participated. The employer, QPS Employment Group, participated through UI Specialist, Mai Lor and recruiter, Ajeh Agbese. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits file including the fact finding documents. The employer's Exhibit A was received into the record.

ISSUES:

Is the claimant able to work and available for work?
Is claimant employed for the same hours and wages?
Is the employer's account subject to charge?
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: The claimant was employed full time as a forklift operator earning \$11.50 per hour. Claimant typically worked between 50 – 60 hours a week. For the week ending November 28, 2020 (Thanksgiving week); claimant worked 24.75 hours earning \$284.63. For the week ending December 26, 2020 (Christmas week); claimant worked 26.92 hours earning \$309.58. For the week ending January 2, 2021 (New Year week); claimant did not work. For the week ending January 16, 2021 claimant worked 25.47 hours earning \$292.91.

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 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.

Claimant was employed full-time and for the weeks in question but worked less than his normal full-time work week. Claimant was able and available to work during those weeks.

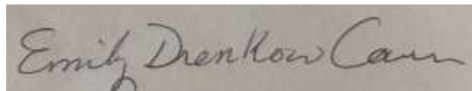
Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he has claimed benefits, except the week ending January 2, 2021 when he earned no wages. For the week ending January 2, 2021 claimant was totally unemployed. For the other three weeks in question, he was 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 and earning less than his weekly benefit amount plus fifteen dollars. Iowa Code § 96.19(38).

The claimant's weekly benefit amount is \$202.00. For the three weeks in question claimant worked less than his normal full-time work week. However for all three weeks he earned more than his weekly benefit plus fifteen dollars. As such, claimant is not partially unemployed.

DECISION:

The January 12, 2021 decision is reversed in part and affirmed in part. Claimant was totally unemployed for the week ending January 2, 2021, and is eligible for benefits for that week. Claimant was not partially unemployed during the other three weeks in question, and is not eligible for benefits for those three weeks.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 30, 2021
Decision Dated and Mailed

Ed/ol

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>