

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NAJIB M SALAH
Claimant

DELTA GLOBAL SERVICES LLC
Employer

APPEAL 21A-UI-10483-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Najib M Salah, the claimant/appellant filed an appeal from the April 14, 2021, (reference 02) unemployment insurance decision that denied benefits as of February 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on June 30, 2021. Mr. Salah participated and testified. The employer did not register for the hearing and did not participate. Official notice was taken of the administrative record.

ISSUE:

Is Mr. Salah partially unemployed and able to and available for work?
If so, 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: Mr. Salah began working for the employer in 2018. He works as a part-time ramp agent. Mr. Salah was paid \$10.50 per hour until mid-June 2021.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, the employer did not offer Mr. Salah any hours for several months in 2020.

Mr. Salah was a full-time university student for the Spring 2021 semester. In late December 2020/early January 2021, Mr. Salah went on "ready reserve" status. Under that status an employee works eight hours or less per week. Because of his school work, Mr. Salah was not able to pick up any more hours than the hours he worked in ready reserve status. After the semester ended in May 2021, Mr. Salah began working his usual part-time hours again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Salah was not available effective February 14, 2021.

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 § 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 (5) and (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the

students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(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 Code section 96.7(2)a(2)(a) provides:

2. 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.

In this case, Mr. Salah was a full-time student for the Spring 2021 semester and he devoted a major portion of his time to his studies. Mr. Salah was not available for work effective February 14, 2021. Benefits are denied effective March 14, 2021.

DECISION:

The April 14, 2021 (reference 01) unemployment insurance decision is affirmed. Mr. Salah was not available for work effective February 14, 2021. Benefits are denied effective February 14, 2021.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

July 14, 2021
Decision Dated and Mailed

dz/mh