

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVIN M SHIELDS

Claimant

TEAM STAFFING SOLUTIONS INC

Employer

APPEAL 19A-UI-06729-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/14/19

Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Able to and available for work
Iowa Code § 96.19(38)b – Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same hours and same wages
Iowa Code § 96.7(2)a(2) – Same base period employment

STATEMENT OF THE CASE:

The employer/appellant, Team Staffing Solutions Inc., filed an appeal from the August 13, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Sarah C. Fiedler, HR Generalist.

The administrative law judge took official notice of the administrative records including the fact-finding documents, wage history (WAGE-A) and weekly continued claim history (KCCO). Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant partially unemployed effective July 14, 2019?

Is the claimant available for work effective July 14, 2019?

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: The claimant worked most recently on assignment from June 18, 2019 until July 9, 2019 at Silgan. The claimant ended the assignment because he suffered heat stroke on the job and determined he could not work in a factory or non-ventilated/air conditioned facility. The claimant has no other employment and the only restriction to his employability is to work where there is air conditioning/ventilation. The employer does not have work available to the claimant within the restriction.

The issue of the claimant’s July 9, 2019 separation has not yet been adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

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.

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 not performed services and earned wages for any week he has claimed benefits. As such, he is totally unemployed.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. 871 IAC 24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). In this case, the employer stated the claimant will not work in factories or assignments that do not include air conditioning or ventilation after suffering from heatstroke on a job assignment. While it is true that the claimant may not be able to perform work for this employer, the administrative law judge is persuaded there are sufficient employment opportunities available to the claimant within his restriction, and that the restriction is not so severe as to prevent him from other gainful employment. Accordingly, the administrative law judge concludes the claimant is able to and available for work.

REMAND: The issue of whether the claimant's July 9, 2019 separation from employment is disqualifying under Iowa Code § 96.5(1) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 13, 2019 (reference 01) initial decision is affirmed. The claimant is totally unemployed. He is not working the same hours and wages that he was hired, nor that are in his based period. Benefits are allowed provided he is otherwise eligible. **REMAND:** The issue of whether the claimant's July 9, 2019 separation from employment is disqualifying under Iowa Code § 96.5(1) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn