

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY L RAAB
Claimant

SEVENTH AVENUE INC
Employer

APPEAL 21A-UI-01861-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (5)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

On December 29, 2020, Seventh Avenue Inc (employer/appellant) filed a timely appeal from the December 22, 2020 (reference 02) unemployment insurance decision that allowed benefits beginning November 15, 2020 based on a finding claimant able and available for work.

A telephone hearing was held on February 24, 2021. The parties were properly notified of the hearing. Terry Raab (claimant/respondent) participated personally. Employer participated by Employment Coordinator Teah Shirk.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? 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:

Claimant began working for employer on June 28, 2018. Claimant is not still employed by employer. Claimant last performed work for employer December 13, 2020. Claimant was employed part-time as a forklift operator. Claimant's hours always fluctuated based on the availability of work and there was no guarantee of certain hours. However, he had established a clear pattern of employment prior to the pandemic. He typically worked between four and seven hours per day, Monday through Friday, or between 20 and 35 hours per week. Claimant's hourly wage was \$16.00 per hour, so he typically earned between \$320.00 and \$560.00 per week.

Far less work was available for claimant when the pandemic began, including times when there was no work available for an entire week. Claimant was able to and available for work during those weeks.

Claimant filed a claim for benefits each week from the benefit week ending April 25, 2020 and continuing through the benefit week ending July 25, 2020. Claimant reported the wages earned each week. He was not working anywhere else at the same time. Claimant reported no wages in the benefit weeks ending April 25, May 9, and June 6, 2020. He reported wages less than his weekly benefit amount plus \$15.00 in the weeks ending May 23, June 20, July 4, and July 11, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 22, 2020 (reference 02) unemployment insurance decision that allowed benefits beginning November 15, 2020 based on a finding claimant was able and available for work is MODIFIED with no change in effect. Claimant is eligible for benefits as set forth below.

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 section 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.

Claimant is not eligible for benefits from November 15, 2020, as he has not filed a weekly claim for benefits from that date and continuing to present. However, claimant was totally unemployed and eligible for benefits in the weeks ending April 25, May 9, and June 6, 2020. Claimant was otherwise able to and available for work during those weeks. He is partially unemployed and eligible for benefits during the weeks ending May 23, June 20, July 4, and July 11, 2020, as he earned wages less than his weekly benefit amount plus \$15.00 during those weeks.

While claimant's hours always fluctuated based on the availability of work and there was no guarantee of certain hours, he had established a clear pattern of employment prior to the pandemic. He typically worked between four and seven hours per day, Monday through Friday, or between 20 and 35 hours per week. Claimant's weekly benefit amount is \$318.00, or approximately the same as if he worked toward the low end of hours each week during his usual pattern of employment before the pandemic. The administrative law judge finds claimant was therefore partially unemployed during any week in which he earned less than his weekly benefit amount plus \$15.00, or \$333.00, as that was approximately what he would earn during the weeks when few hours were available.

The administrative law judge notes that employer's account shall not be charged, as the department has determined not to charge employers for unemployment caused by the pandemic.

DECISION:

The December 22, 2020 (reference 02) unemployment insurance decision that allowed benefits beginning November 15, 2020 based on a finding claimant was able and available for work is MODIFIED with no change in effect. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 4, 2021
Decision Dated and Mailed

abd/lj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.