

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSEMARY RAMON

Claimant

EXPRESS SERVICES INC

Employer

APPEAL 20A-UI-00868-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19

Claimant: Respondent (2R)

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Employer filed an appeal from the January 24, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 25, 2020, at 3:00 p.m. Claimant did not participate. Employer participated through Holly Eichmann, Franchise Owner. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is eligible to receive partial benefits.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Express Services, Inc., a temporary employment firm, on February 21, 2019. Claimant had only one placement during her employment. Claimant was placed with Metal Craft in Mason City, Iowa as a part-time general laborer earning \$15.00 per hour. Claimant was not guaranteed a certain number of hours per week at this placement. Claimant worked anywhere from 11 to 40 hours per week. Claimant's placement ended on November 22, 2019, when Metal Craft dismissed claimant for attendance issues. Claimant remains eligible for assignment with Express Services, Inc. Claimant filed an original claim for unemployment insurance benefits effective December 22, 2019.

On January 16, 2020, employer offered claimant another assignment with Metal Craft as a laborer making \$15.00 per hour beginning January 21, 2020. Claimant told employer that she would come into the office to complete the necessary paperwork on January 20, 2020, but did not report to the office or complete the paperwork. Employer followed up with claimant on

January 21, 2020, but has received no response. There has been no initial investigation and determination regarding whether claimant requested a new assignment from Express Services, Inc. within three days of her assignment ending on November 22, 2019 or whether claimant refused to accept an offer of suitable work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is totally unemployed and not able to and available for work. Benefits are denied.

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 Admin. Code r. 871-24.22 provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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.

Iowa Code section 96.7(2)a(2) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Claimant has not worked for employer since filing her original claim effective December 22, 2019. Therefore, claimant is not partially or temporarily unemployed; claimant is totally unemployed. Because claimant is totally unemployed, the requirement that claimant be able to and available for work is not waived. Claimant has not met her burden of proving that she is able to and available for work since filing her original claim. Therefore, benefits are denied until such time as claimant contacts Iowa Workforce Development and establishes that she is able to and available for work.

The issues of whether claimant requested a new assignment from Express Services, Inc. within three days of her assignment ending and whether claimant refused to accept an offer of suitable work should be remanded for an initial investigation and determination.

DECISION:

The January 24, 2020 (reference 01) unemployment insurance decision is reversed. Claimant is totally unemployed and is not able to and available for work since filing her original claim effective December 22, 2019. Benefits are denied until claimant contacts Iowa Workforce Development and establishes that she is able to and available for work.

REMAND:

The issues of whether claimant requested a new assignment from employer within three days of her assignment ending and whether claimant refused to accept an offer of suitable work are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn