

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN L CHAPMAN
Claimant

WEST SIDE TRANSPORT INC
Employer

APPEAL 20A-UI-08414-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 14, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2020, at 11:00 a.m. Claimant participated. Employer participated through Brandi Krewson, Human Resources Assistant. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment as a full-time driver with West Side Transport on November 27, 2013. Employer furloughed employees from April 2, 2020 until May 29, 2020 due to a reduction in business as a result of Covid-19. Claimant performed no work for employer and earned no wages from April 2, 2020 until May 29, 2020. Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020. Claimant returned to work June 1, 2020 and has since worked his regular full-time hours. Claimant was able to and available for work between April 2, 2020 and May 29, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed and able to and available for work between April 2, 2020 and May 29, 2020. Benefits are allowed provided claimant is otherwise eligible.

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 96.4(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. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

From April 2, 2020 until May 31, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to the COVID 19 pandemic.

DECISION:

The July 14, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was totally unemployed and able to and available for work from April 2, 2020 until May 31, 2020. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
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August 31, 2020
Decision Dated and Mailed

acw/scn