

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERARD J GIBSON
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 20A-UI-13384-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/05/20
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On October 28, 2020, Team Staffing Solutions Inc. (employer/appellant) filed a timely appeal from the October 19, 2020 (reference 02) unemployment insurance decision that determined Gerard Gibson (claimant/respondent) was eligible to receive unemployment insurance benefits beginning July 5, 2020, based on a finding that he was able to and available for work.

A telephone hearing was held on December 22, 2020. The parties were properly notified of the hearing. Claimant did not register a number for the hearing and did not participate. Employer participated by Risk Manager Sarah Fiedler.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the claimant totally, partially, or temporarily unemployed?
- 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 July 19, 2019. Claimant is still employed by employer. Claimant was working 40 hours per week until the week ending July 11, 2020, when his hours were reduced to 32 per week. This reduction was due to the pandemic. Specifically, employer had to schedule claimant and other employees for fewer hours in order to make sure proper social distancing and cleaning procedures were followed. The reduction in hours has continued to date. Claimant's weekly benefit amount is \$331.00. He typically earns \$448.00 per week.

The department has indicated it "is not charging employers for claims made by their employees due to COVID-19 related unemployment." See "Updates and Resources About COVID-19, Information for Employers," available at <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>. Claimant is currently classified as Group Code 3 in the department's database.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the October 19, 2020 (reference 02) unemployment insurance decision that determined claimant was eligible to receive benefits beginning July 5, 2020 is **AFFIRMED** pending REMAND to the department to classify claimant's unemployment as being due to the pandemic and thus preclude employer from charges.

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's hours were reduced from 40 to 32 hours per week beginning with the benefit week ending July 11, 2020 and continuing to date. Because claimant is working less than the regular full-time week and there is no indication that is unable or unavailable for work, he is eligible for benefits. However, claimant must continue to report his weekly wages in order to determine whether he is partially unemployed in any given week. In order to be partially unemployed, claimant must work less than the regular 40-hour week and earn less than his weekly benefit amount plus \$15.00. His weekly benefit amount is \$331.00.

The administrative law judge finds the reduction in hours was due to the pandemic. Specifically, employer had to schedule claimant and other employees for fewer hours in order to make sure proper social distancing and cleaning procedures were followed. The claim should therefore be reclassified so that employer is not charged for benefits, per the department's guidance.

DECISION:

The October 19, 2020 (reference 02) unemployment insurance decision that determined claimant was eligible to receive benefits beginning July 5, 2020 is **AFFIRMED** pending **REMAND** to the department to classify claimant's unemployment as being due to the pandemic and thus preclude employer from charges.

REMAND:

This matter is **REMANDED** to the department to classify claimant's unemployment as being due to the pandemic and thus preclude employer from charges.



Andrew B. Duffelmeyer
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January 8, 2021
Decision Dated and Mailed

abd/scn