

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOSHUA C NILES**  
Claimant

**APPEAL NO. 20A-UI-10406-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK PEARL ENTERPRISES INC**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (4)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Total, Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 14, 2020, reference 02, decision that allowed benefits to the claimant for the period beginning April 12, 2020, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was not performing services in the same pattern as in the base period. After due notice was issued, a hearing was held on October 14, 2020. Claimant Joshua Niles participated. Jennifer Gehrls represented the employer. Exhibits 1, A through D, F, G, and H were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period of April 12, 2020 through June 27, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period of April 12, 2020 through June 27, 2020.

Whether the employer's account may be charged for benefits for the period of April 12, 2020 through June 27, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Joshua Niles established an original claim for benefits that Iowa Workforce Development deemed effective March 22, 2020. Iowa Workforce Development set Mr. Niles' weekly benefit amount for regular benefits at \$162.00. Mr. Niles made weekly claims for each of the weeks between March 22, 2020 and June 27, 2020 and received regular benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits for each week of the claim. Black Pearl Enterprises, Inc. is not a base period employer for purposes of the claim that was effective March 22, 2020.

At the time Mr. Niles established his original claim for benefits, he was employed by Black Pearl Enterprises, Inc., doing business as Subway, as a part-time Sandwich Artist. Jennifer Gehrls is the business owner. Mr. Niles' immediate supervisor was Michelle Steins, Manager. Before COVID-19 became a factor in the employment, Mr. Niles usually worked from 20 hours to 40 hours per week. Before COVID-19 became a factor in the employment, Mr. Niles maintained broad availability for work. Mr. Niles made the employer aware that he was available to work at all times except Sunday morning, Tuesday, and the occasional Monday night. At all relevant times, Mr. Niles' hourly wage was \$9.50. From March 21, 2020 until April 9, 2020, Mr. Niles was off work due to an illness his doctor suspected to be COVID-19. Mr. Niles returned to work on Friday, April 10, 2020. Prior to his return to work, Mr. Niles had notified Ms. Steins that he would only be available for the one shift during the week that ended April 11, 2020. This was because the quarantine was scheduled to last through Friday, April 10, 2020. Mr. Niles intended his one day of availability during the week of April 11, 2020 to be Saturday, April 11 because he was supposed to be on quarantine through April 10. However, Ms. Steins scheduled Mr. Niles to work on Friday, April 10 and Mr. Niles worked the shift as scheduled. Mr. Steins was not scheduled to work on Saturday, April 11.

Before Mr. Niles returned to work on Friday, April 10, 2020, Ms. Steins question Mr. Niles about filing for unemployment insurance benefits and told him that Ms. Gehrls had been asking about his claim for benefits. Before Mr. Niles reported for work on April 10, he sent a text message to Ms. Gehrls in which he wrote the following:

Hey Jen, this is River... Michelle told me you were asking about me filling [sic] for unemployment, I filed due to the fact that with recent events hours have been low (especially since my dr had me do a quarentine [sic]) and my wife is currently out of work, so being that the government is offering aid to those affected by the events I decided it is/was best to seek aid so Ariel and I don't have to worry quite as much about the fact that we aren't working

Ms. Gehrls did not respond to Mr. Niles' text message. Instead, the employer left Mr. Niles off the work schedule for the week that ended April 18, 2020 and thereafter scheduled him to work no more than one shift per week during April 2020. The employer took Mr. Niles completely off the schedule effective May 3, 2020. On or about May 17, 2020, Mr. Niles called Ms. Gehrls and asked why he had not been receiving any hours on the work schedule for several weeks. Ms. Gehrls told Mr. Niles that as long as he was receiving unemployment insurance benefits, he would not receive any work hours and that the employer was going to give work hours to those employees who were not getting unemployment insurance benefits. The employer continued to leave Mr. Niles off the work schedule. Throughout, Mr. Niles had remained available to work the 22 to 40 hours per week he had worked before COVID-19 and his unemployment insurance claim became an issue in the employment. Mr. Niles gave up on the employment at the end of June 2020 and accepted new employment that he began on July 14, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

The decision from which the employer appealed concerned Mr. Niles eligibility for unemployment insurance benefits for the period beginning April 12, 2020. Accordingly, this decision will focus on that period.

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

The evidence in the record establishes that the employer retaliated against the claimant in response to the claimant exercising his right to establish a claim for unemployment insurance benefits and did so by substantially reducing and eliminating work hours for the claimant despite the claimant's continued broad availability for work. The claimant was able to work, available for work, but partially, temporarily or totally unemployed during the period of April 12, 2020 through June 27, 2020. The claimant is eligible for benefits for the period beginning April 12, 2020 through the benefit week that ended June 27, 2020, provided he meets all other eligibility requirements. This employer is not a base period employer and therefore is not subject to being charged for benefits paid to the claimant during the current claim year that began for the claimant on March 22, 2020 and which will end on or about March 21, 2021. See Iowa Code section 96.7(2), regarding base period employer liability.

**DECISION:**

The August 14, 2020, reference 02, decision is modified in favor of the employer as follows. The claimant was able to work, available for work, but partially, temporarily or totally unemployed during the period of April 12, 2020 through June 27, 2020. The claimant is eligible for benefits for the period beginning April 12, 2020 through the benefit week that ended June 27, 2020, provided he meets all other eligibility requirements. This employer is not a base period employer and therefore is not subject to being charged for benefits paid to the claimant during the current claim year.



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James E. Timberland  
Administrative Law Judge

October 16, 2020  
Decision Dated and Mailed

jet/scn