

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SAMDELIA F CARR
Claimant

MAINSTREAM LIVING INC
Employer

APPEAL 22A-UI-18910-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/17/21
Claimant: Respondent (4)**

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the November 8, 2022, (reference 04) unemployment insurance decision that allowed benefits finding that claimant was on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on December 8, 2022. Claimant participated personally. Employer participated through witnesses director of human resources Marcanne Lynch, program coordinator Tracy Moore, and team leader William Prather. Human resources manager Stephanie Livingston observed on behalf of employer. Employer's Exhibits 1 – 4 were received. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective September 4, 2022?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed full time as a direct support professional since March 1, 2021. During her entire employment, claimant worked approximately 30 hours per week, Monday, Tuesday, and Wednesday each week from 10:00 p.m. to 7:00 a.m.

Towards the end of August 2022, claimant learned the site where she was assigned to work was closing on September 6, 2022. Claimant and human resources staff communicated regarding moving claimant to a different site. There was no work available for claimant and she was placed on a temporary layoff.

On September 14, 2022, employer notified claimant that it had work available for her at a different local site, working the same hours and wages as she worked prior to the layoff. Claimant was out of town caring for her mother at that time, but employer kept the position open

and told claimant to notify it when she returned to town. Claimant returned to Des Moines on September 26, 2022, and notified employer she had returned and was willing to meet to discuss the open position. Claimant missed the first two scheduled meetings with employer due to personal issues, but on October 28, 2022, claimant met with Mr. Prather. Claimant notified Mr. Prather at the meeting that she was no longer able to work overnight shifts. Claimant no longer had childcare available for overnight shifts. Mr. Prather offered claimant a 2:00 p.m. to 10:00 p.m. shift, and claimant said she would check with her babysitter about her availability at that time. Her babysitter was unavailable, so claimant did not reach out to employer. On November 14, 2022, employer contacted claimant to discuss available for work. Claimant could work on Mondays, Tuesdays, and Wednesday, from 8:30 a.m. to 3:00 p.m. because that was when she had childcare available. Employer does not have any shifts that fall during that time period. Employer continues to search for employment opportunities for claimant.

Claimant filed her initial claim for benefits effective October 17, 2021. She filed an additional claim effective September 4, 2022. Claimant did not file any weekly continued claims for benefits since filing the additional claim in September 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.1A(37) 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)(a), (b), and (c) 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.

Iowa Code § 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. 871-24.23 provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been permanently separated from an employer, whereas, an individual who is temporarily unemployed has not been permanently separated from employment. To be partially unemployed, an individual must be working less than their regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.*

Here, employer did not have work available for claimant during the week ending September 10, 2022. Claimant was temporarily unemployed due to a short-term layoff. Benefits are allowed for the one-week period ending September 10, 2022, provided claimant is otherwise eligible.

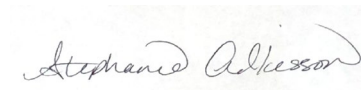
An individual claiming benefits has the burden of proof that she is able to work. For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Here, claimant was out of town between September 13, 2022, and September 22, 2022. Employer had work available at claimant's same hours and wages effective September 14, 2022, but claimant was out of town caring for her mother. She was therefore not available for work for the two weeks ending September 24, 2022.

Employer continued to have work available for claimant. However, claimant was unable to work during the hours employer had work available because claimant lacked childcare. Claimant was therefore not available for work. Claimant is not eligible for regular, state-funded unemployment insurance benefits effective September 11, 2022, due to being out of town, not having childcare, and not making herself available to work during the hours employer had available.

The administrative law judge notes that claimant failed to file any weekly continued claim for benefits between September 4, 2022, and the end of the claim benefit year. Therefore, this matter is moot.

DECISION:

The November 8, 2022, (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant was on a short-term layoff during the one-week period ending September 10, 2022, and benefits are allowed during that period provided claimant is otherwise eligible. Claimant was not able to and available for work effective September 11, 2022, and regular, state-funded unemployment insurance benefits are denied.



Stephanie Adkisson
Administrative Law Judge

December 12, 2022
Decision Dated and Mailed

sa/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.