

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REESE E GARDNER
Claimant

G M R I INC
Employer

APPEAL 22A-UI-08986-AW
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/13/22
Claimant: Appellant (5)

Iowa Code § 96.1A(37) – 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:

Claimant filed an appeal from the April 7, 2022 (reference 01) unemployment insurance decision that denied benefits effective March 13, 2022 finding claimant was not able to or available for work due to injury. The parties were properly notified of the hearing. A hearing was held in Waterloo, Iowa on June 13, 2022. Claimant participated. Employer did not participate. 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.
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 is employed as a part-time Utility Worker for GMRI (d/b/a Longhorn restaurant). Claimant injured his back and was unable to work. Claimant reported to the fact-finder that the injury occurred many years ago and was not related to his employment. In March 2022, claimant was absent from work while awaiting further instructions from his physician regarding his back injury. Claimant's physician restricted him to light duty work.

The administrative record shows that claimant filed an initial claim for unemployment insurance benefits effective March 13, 2022 and ongoing weekly claims for the three benefit weeks between March 13, 2022 and April 2, 2022. Claimant reported zero wages earned on his three weekly claims. Claimant's weekly benefit amount is \$142.00.

After April 2, 2022, claimant returned to working 12 – 15 hours per week at a rate of \$15.50 per hour. Since March 13, 2022, employer had claimant's regular work available for claimant to perform.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 96.4(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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(1) 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. R. 871-24.23(26), (35) provide:

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 different from the contract for hire, such claimant cannot be considered partially unemployed.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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.

Between March 13, 2022 and April 2, 2022, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, he is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Inasmuch as claimant's medical condition was not work-related and the treating physician had not released claimant to return to work without restrictions, claimant has not established his ability to work from March 13, 2022 through April 2, 2022. While claimant may be able to perform light-duty work, employer is not obligated to accommodate a non-work-related medical condition or injury. Because claimant had not been released to perform his full work duties, claimant was not able to or available for work. Accordingly, he is not eligible for unemployment insurance benefits.

Since April 2, 2022, claimant has been employed under the same hours and wages as contemplated at hire or has earned more than his weekly benefit amount plus \$15.00. Because the level of employment is consistent with the base period wage history with this employer and claimant's wages exceeded \$157.00, claimant may not be considered partially unemployed. Claimant is not eligible for unemployment insurance benefits.

Benefits are denied effective March 13, 2022. Inasmuch as employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The April 7, 2022 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was totally unemployed and not able to and available for work from March 13, 2022 until April 2, 2022. Effective April 2, 2022, claimant was not partially unemployed. Benefits are denied effective March 13, 2022. No charges shall be made to employer's account.



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

June 23, 2022
Decision Dated and Mailed

acw/ACW