

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ADAM J PETTYJOHN
Claimant

APPEAL NO: 18A-UI-07340-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 06/10/18
Claimant: Respondent (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the July 6, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 26, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Maggie Worrall, human resources/payroll. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment December 5, 2013. He last performed work as a full-time market clerk on April 4, 2018. The claimant established his claim for unemployment insurance benefits with an effective date of June 10, 2018. He was permanently separated from employment on July 19, 2018.

The employer placed the claimant on an involuntary leave of absence effective April 7, 2018 in response to the claimant's April 5, 2018 arrest related to domestic abuse/assault. The claimant was not allowed to work until the charges were resolved. The claimant informed the employer on July 6, 2018 that the charges had been resolved. Ms. Worrall stated the claimant was advised to follow up with management to get put back on the schedule, and that he could have resumed working July 8, 2018. For unknown reasons, the claimant did not follow up with management or communicate with management, so he was not scheduled again. Permanent

separation ensued July 19, 2018. That separation has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the period of June 10, 2018 through July 7, 2018 only.

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.

For the period of June 10, 2018 to July 7, 2018: The claimant was placed on an involuntary leave, initiated by the employer on April 7, 2018 in response to an arrest and charges. Because the claimant was not currently employed under the same hours and wages as contemplated at hire, he is considered totally unemployed for that period only. Benefits are allowed June 10, 2018 through July 7, 2018, provided the claimant meets all other requirements.

For the period beginning July 8, 2018: For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(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.

In this case, the employer credibly testified that full-time work was available for the claimant effective July 8, 2018, provided the claimant made contact with the employer management. The claimant failed to do so and consequently could not be scheduled. The claimant did not attend the hearing to refute the employer's credible testimony as to why he did not return to work on July 8, 2018, when work was available. Accordingly, the administrative law judge concludes the claimant is not able to and available for work beginning July 8, 2018. Benefits are denied effective July 8, 2018.

REMAND: The issues of overpayment and the claimant's permanent separation from employment effective July 19, 2018 are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The July 6, 2018, (reference 01) unemployment insurance decision is modified in favor of the employer/appellant. The claimant was totally unemployed from June 10, 2018 through July 7, 2018 and benefits are allowed, provided he is otherwise eligible. Benefits are denied effective July 8, 2018 because the claimant is not able to and available for work.

REMAND: The issues of overpayment and the claimant's permanent separation from employment effective July 19, 2018 are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn