

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYANT CRAWFORD
Claimant

JAM EQUITIES OF SE 14TH LLC
Employer

APPEAL 19A-UI-09639-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 4, 2019 (reference 04) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was not willing to work the number of hours required in his occupation. The parties were properly notified of the hearing. A telephone hearing was held on January 6, 2020. The claimant, Bryant Crawford, participated personally. Tyshawn Crawford participated as a witness for the claimant. The employer, Jam Equities of SE 14th LLC, participated through witness Asif Poonja. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUE:

Was the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cook at the employer's fast food restaurant located on Southeast 14th Street in Des Moines, Iowa. There was a fire at the restaurant on October 29, 2019 and it has been closed since that date. Claimant believed that the restaurant would re-open after a few weeks. Several weeks after the restaurant closed, the claimant learned from a friend that the Southeast 14th Street location employees were being allowed to work at another restaurant located on Merle Hay Road. Claimant contacted the manager for the Merle Hay Road restaurant and was allowed to work for three days on November 7, 2019, November 8, 2019 and November 10, 2019. The manager then told him that he would be notified when he was back on the schedule. Claimant has not worked since November 10, 2019 at either location.

Claimant filed his initial claim for unemployment insurance benefits with an effective date of November 3, 2019. His weekly benefit amount is \$175.00. He has filed weekly-continued claims for unemployment insurance benefits for each week beginning November 3, 2019. Claimant has been able to and available for full-time work for each week that he has filed his weekly-continued claims for benefits. Claimant has reported that he has not earned any wages during the weekly-continued claims that he has filed; however, he did earn wages for six hours

on November 7, 2019 and six hours on November 8, 2019 at an hourly rate of pay of \$9.50. Claimant also earned wages for six hours on November 10, 2019 at an hourly rate of pay of \$9.50.

Claimant's administrative records establish that his Group Code is currently listed as 3, temporary layoff, and he is not required to be able to and available for work. Claimant has been actively and earnestly seeking work since the first week of December, 2019. Claimant's administrative records indicate that the employer provided documentation to the fact-finder on December 3, 2019 alleging that the claimant was still employed with the employer and was receiving wages. See Fact-Finding documents. The paystubs forwarded to the fact-finder indicate they were for Tyshawn Crawford and not this claimant. See Fact-Finding documents. The fact-finding documents provided from Mr. Poonja to the fact-finder also allege that the claimant was still employed with this employer, even though Mr. Poonja testified at this appeal hearing that the claimant had been permanently separated from employment with this employer on or about November 20, 2019.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant's separation from employment is disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination, with notice and opportunity to be heard provided to both parties.

REASONING AND CONCLUSIONS OF LAW:

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

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".**

(emphasis added).

Iowa Code § 96.19(38) provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Admin. Code r. 871-24.2(1)c provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are: **(1) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."** (2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs. (3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group "6." (4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document work searches made either in-person, online or by submitting a resumé. (5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains only to those individuals who worked full-time and will

again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6." (6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6." (7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

(emphasis added).

For the week-ending November 9, 2019, claimant was partially unemployed because he worked two days that week, but earned wages less than his weekly-benefit amount plus fifteen dollars. See Iowa Code § 96.19(38)b(1). For the week-ending November 16, 2019, claimant was partially unemployed because he worked one day that week, but earned wages less than his weekly-benefit amount plus fifteen dollars. See Iowa Code § 96.19(38)b(1). For the week-ending November 23, 2019, claimant was temporarily unemployed because his work location was closed and there was no need for his full-time services at the Merle Hay restaurant. Because he was temporarily unemployed, it was not necessary that he be able to and available for other employment because he would have been returning to his regular full-time work. See Iowa Code § 96.19(38)c.

Claimant was never notified that he was permanently separated from employment with this employer and his unemployment insurance benefits group code remains a "3", meaning that claimant was not being required to be able and available for work or to make an active and earnest work search by contacting at least two employers each week.

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that he was partially or temporarily unemployed effective November 3, 2019. He was not required to be able to and available for work, or earnestly and actively seeking work under Iowa Code § 96.4(3) during his period of temporary unemployment. Accordingly, benefits are allowed effective November 3, 2019, provided claimant is otherwise eligible.

NOTE TO CLAIMANT:

Because of being separated from work, claimant is obligated to be able to and available for work and make at least two work searches during each week benefits are claimed. Claimant is instructed to keep a list of each work search contacts that includes the following:

- **Date of the contact with the employer**
- **Company name, address and phone number**
- **Contact name person whom they contacted**
- **Method of contact (in person, online, email, mail)**
- **Results of contact (denied, offer, interview, no results)**

DECISION:

The December 4, 2019 (reference 04) unemployment insurance decision is reversed. The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that he was partially or temporarily unemployed effective November 3, 2019. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination, with notice and opportunity to be heard provided to both parties. A determination whether the claimant is assigned the correct group code shall be determined during the investigation as well.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn