

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER M KLOPENSTINE
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 21A-UI-10941-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Respondent (4R)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Remedy Intelligent Staffing Inc, the employer/appellant, filed an appeal from the March 24, 2021, (reference 01) unemployment insurance decision that allowed benefits as of December 27,, 2020. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2021. The employer participated through Vicky Matthias, branch manager. Ms. Klopenstine did not register for the hearing and did not participate. Official notice was taken of the administrative record.

ISSUES:

Is Ms. Klopenstine partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Klopenstine began working for the employer on July 20, 2020. She worked as a full-time general labor on assignment to General Mills.

General Mills closed their plant from December 27, 2020 through January 2, 2021. Since the employer was closed, Ms. Klopenstine not did attend work that week. She returned to work on Monday, January 4, 2021.

Ms. Klopenstine's employment ended with this employer on, or about, April 27, 2021. The issue of Ms. Klopenstine's separation from employment has not been investigated by Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Klopenstine is temporarily unemployed from December 27, 2020 through January 2, 2021.

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 Code § 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.

Iowa Admin. Code r. 871-24.23 (26) 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.

Iowa Code section 96.7(2)a(2)(a) 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.

In this case, Ms. Klopenstine was unemployed due to a plant shutdown from December 27, 2020 through January 2, 2021. She returned to her full time job when the plant reopened. Ms. Klopenstine was temporarily unemployed during the plant shutdown. Benefits are allowed the week of December 27, 2020 through January 2, 2021.

DECISION:

The March 24, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, the employer. Ms. Klopenstine was temporarily unemployed the week of December 27, 2020 through January 2, 2021. Benefits are allowed for that one week only, provided she is otherwise eligible.

REMAND:

The issue of Ms. Klopenstine's separation from employment with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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July 15, 2021
Decision Dated and Mailed

dz/kmj