

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALICE UMUTONI**

Claimant

**APPEAL 24A-UI-02174-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**

Employer

**OC: 01/21/24**

**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On February 23, 2024, employer Remedy Intelligent Staffing Inc. filed an appeal from the February 13, 2024 (reference 02) unemployment insurance decision that allowed benefits effective January 21, 2024, determining claimant was on a short-term layoff and was still employed with the employer. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on March 1, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 10:00 a.m. on Wednesday, March 20, 2024. Claimant Alice Umutoni personally participated. Employer Remedy Intelligent Staffing Inc. participated through Dawn Starr, Branch Manager. Employer's Exhibits 1 through 25 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work?

Is the claimant totally, partially, and temporarily unemployed?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Remedy Intelligent Staffing Inc. on May 10, 2023. She is still employed with this employer. Claimant currently has an assignment at General Mills, where she works full-time hours as a material handler.

Claimant opened a claim for unemployment insurance benefits effective January 21, 2024, due to General Mills shutting down for two weeks. She worked no hours and earned no wages during the week ending January 27, and her standard work hours were not available that week due to the shutdown. Claimant filed a weekly continued claim for that week, reported working no hours and earning no wages, and received her full benefit amount. She also worked no hours and earned no wages during the week ending February 3, and her standard work hours were not available that week due to the shutdown. Claimant filed a weekly continued claim for that week, reported working no hours and earning no wages, and received her full benefit amount.

General Mills reopened after the two-week shutdown the week of February 4, 2024, and claimant was scheduled to return to work the night of February 4, 2024, to resume her regular full-time work schedule. Claimant called in the night of February 4, for her shift extending from February 4-5, and she reported she could not work that night. Claimant also did not work her shifts on February 6 and February 7. Claimant did not check in prior to her shifts, the employer could not reach her to confirm she would be coming to work, and claimant did not come to work either of those nights. Claimant worked her shifts on February 5-6 and February 8-9 as scheduled. When she filed her weekly continued claim for benefits, claimant reported she worked and earned \$240.00 in wages. She received partial unemployment benefits of \$181.00 that week.

Claimant stopped filing claims for several weeks. She then reopened her claim with an additional claim date of March 3, 2024. Claimant called in sick one night and worked the other four nights of her standard full-time schedule that week. When she filed her weekly continued claim for benefits for the week ending March 9, she reported she earned \$150.00 in wages. Claimant has not yet received a benefit payment for that week.

The employer provided a copy of the procedures and work rules it gives to associates taking work assignments at General Mills. (Exhibits 6 through 15) This document reads in relevant part:

Most days the supervisor will confirm that you return the next workday. However, in the event you are not confirmed or are not sure of your status, you must contact the office as early as possible.  
Please call the office at [redacted]. You must contact the office... Between 8:30am and Noon to confirm for 3rd Shift the next day

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed for the weeks ending January 27 and February 3, 2024. Claimant was not eligible for benefits for the weeks ending February 10 and March 9, 2024.

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 96.1A, subsection 37", paragraph "b", subparagraph (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 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.1A(37). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* Here, claimant received no wages and performed no services during the weeks ending January 27 and February 3. Starr confirmed General Mills was shut down during those two weeks and claimant's regular work assignment was not available for her. Claimant was totally unemployed for the two-week period ending February 3, 2024.

Iowa Admin. Code r. 871-24.23 provides in relevant subparts:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

In order to be partially unemployed, an individual must be working less than their regular full-time workweek with their regular employer because that employer does not have the regular, full-time work available for the employee. Here, during both the week ending February 10, claimant worked less than her regular, full-time workweek because she chose not to work the hours available for her. Claimant missed one shift due to calling in sick and missed other shifts because she failed to communicate with the employer per the policy to verify she would be at

work and did not show up at work. Claimant was not available for her regular, full-time workweek the week ending February 10, 2024.

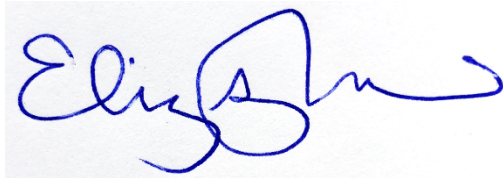
For the week ending March 9, claimant worked four of her five regular nights. The one night claimant did not work was not because the employer did not have work for her. Claimant did not work because she called in sick. Claimant was neither totally unemployed nor partially unemployed during the week ending March 9, 2024.

**DECISION:**

The February 13, 2024 (reference 02) unemployment insurance decision is modified in favor of the employer/appellant. Claimant was temporarily totally unemployed due to a lack of work for the two-week period ending February 3, 2024. Benefits are allowed for those two weeks.

Claimant was not totally or partially unemployed due to a lack of available work during the week ending February 10, 2024. She was not available for work that week. Benefits are withheld for that week.

Claimant was not totally or partially unemployed due to a lack of available work during the week ending March 9, 2024. She worked the majority of her regular workweek that week. Benefits are withheld for that week.



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Elizabeth A. Johnson  
Administrative Law Judge

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March 22, 2024  
Decision Dated and Mailed

LJ/jkb

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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 adquiriera 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.