KEVIN C SIMPSON
Claimant

SEDONA STAFFING INC
Employer

APPEAL 20A-UI-15943-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Respondent (2R)**

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

STATEMENT OF THE CASE:

On November 30, 2020, the employer filed an appeal from the November 24, 2020, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2021. Claimant did not register for the hearing and did not participate. Employer participated through unemployment benefits administrator Colleen McGuinty.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
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: Employer is a temporary staffing firm. Claimant was last assigned to work at West Rock as a full-time packer. Claimant began the assignment on March 30, 2020, and his last day of work was November 12, 2020. West Rock offered claimant a job as a permanent employee. Claimant began working as a permanent employee at West Rock on November 13, 2020. Employer had additional work available for claimant had he not taken the position with West Rock. Claimant's wage records show that he did, in fact, earn wages with West Rock in the fourth quarter of 2020.

Claimant apparently separated from West Rock because he filed a claim for unemployment insurance benefits with an effective date of November 22, 2020. He also returned to employer and requested another assignment. Employer offered and claimant accepted an assignment scheduled to begin on December 2, 2020, but claimant withdrew his acceptance before the assignment began. Employer offered and claimant accepted another assignment that was

scheduled to begin on January 20, 2021, but claimant never appeared for the assignment and did not report to employer that he would not be reporting for the assignment.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant is totally unemployed. So the issue is whether he is able to and available for work.

Here, claimant did not appear for the hearing to assert he is able to work. The only evidence of his availability for work is the fact that he turned down or did not appear for two assignments given to him by employer.

This evidence shows claimant is limiting his availability for work.

This matter will be remanded for a decision on whether claimant is disqualified from receiving benefits based on his separation from employer on November 12, 2020, and based on his separation from his subsequent employer, West Rock.

DECISION:

The November 24, 2020, (reference 03) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective November 22, 2020. Regular

unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work.

REMAND:

The issues of whether claimant's separation from employment with employer on November 12, 2020, and his separation from employment with his subsequent employer, West Rock, disqualify him from receiving unemployment insurance benefits are remanded to the Benefits Bureau of Iowa Workforce Development for initial decisions.

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Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 16, 2021_____
Decision Dated and Mailed

cal/ol

***Note to Claimant*:**

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information.