

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT C HEATON
Claimant

VENUWORKS OF CEDAR RAPIDS LLC
Employer

APPEAL NO. 21A-UI-14131-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 10, 2021, reference 01, decision that allowed benefits effective March 14, 2021, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on August 17, 2021. Claimant participated and presented additional testimony through Travis Jacobs. Sean Meloy represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 14, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 14, 2021.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Scott Heaton, established an original claim for benefits that was effective March 14, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$254.00. As of the appeal hearing, the claimant had made weekly claims for each of the weeks between March 14, 2021 through August 7, 2021

The claimant began his part-time on-call employment with Venuworks of Cedar Rapids, L.L.C. in 2001. This employer operates three event venues in the Cedar Rapids area. All of the work the claimant has performed for this employer has been work the claimant performed as a member of a stagehands union local. The claimant was and is a union member in good standing. This employer contacts the union hiring hall when stagehands are needed to assist with events/performances. The claimant is midway up the union local's seniority roster. Whether the employer and the union hiring hall have work for the claimant in connection with a

particular event depends on the number of stagehands the employer requests and whether the union hiring hall offers the work to the claimant, based on his seniority. The claimant's compensation for work performed for the employer depends on the compensation rate and the threshold minimum number of compensated hours agreed to between the employer and the union local. The claimant has not declined any work with the local or with this employer since he established the new original claim and the new benefit year that started on March 14, 2021.

The claimant's actual work hours with the employer since March 14, 2021 have been as follows. Note the hours and compensation rate reported by the employer omits information regarding the threshold minimum hours of compensation. In other words, the claimant's wages may have been greater than those indicated by multiplying the number of hours actually worked by the compensation rate.

<u>Day worked</u>	<u>Worked hours</u>	<u>Rate</u>	<u>Wages before factoring threshold</u>
5/21/21	5.5 hours	\$21.62	\$118.91
6/17/21	3.5 hours	\$21.62	\$75.67
6/18/21	2.5 hours	\$21.62	\$54.05
6/25/21	10 hours	\$21.62	\$216.20
7/2/21	6 hours	\$22.57	\$135.42
7/3/21	3.5 hours	\$22.57	\$78.99
7/17/21	5 hours	\$22.57	\$112.85
7/20/21	3.5 hours	\$21.62	\$75.67
8/11/21	5.5 hours	\$21.62	\$118.91
8/12/21	4 hours	\$22.57	\$90.28
8/13/21	2 hours	\$22.57	\$45.14
8/14/21	1 hours	\$21.62	\$21.62
8/15/21	5 hours	\$21.62.	\$108.10

The claimant is also a member of a second union hiring hall that serves the Quad Cities.

The claimant's base period for purposes of the March 14, 2021 benefit year consists of the fourth quarter of 2019 and the first, second and third quarters of 2020. The claimant's base period wages were as follows:

<u>EMPLOYER</u>	<u>ACCT-LOC</u>	<u>2019/4</u>	<u>2020/1</u>	<u>2020/2</u>	<u>2020/3</u>
QUAD CITY SYMPHONY ORCHES	070275-000	101			
"THEATRICAL STAGE WORKERS	272789-000	475	2615		
VENUWORKS OF DAVENPORT LL	318568-000	680	791		
VENUWORKS OF CEDAR RAPIDS	318569-000	3303	1046		
SMG % ADP UCM UC EXPRESS	315583-000		193		

The claimant's quarter wages for the fourth quarter of 2014 through the second quarter of 2021 were as follows:

<u>EMPLOYER</u>	<u>ACCT-LOC</u>	<u>2020/4</u>	<u>2021/1</u>	<u>2021/2</u>
"THEATRICAL STAGE WORKERS	272789-000	595		
VENUWORKS OF CEDAR RAPIDS	318569-000	367		302
QUAD CITY SYMPHONY ORCHES	070275-000			498
SMG % ADP UCM UC EXPRESS	315583-000			407

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code rule 871.24.22(3)(c) provides:

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the Ch 24, p.4 IAC individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made

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

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 96.1A(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.

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

The claimant is not temporarily or partially unemployed from Venuworks of Cedar Rapids, L.L.C. because of the part-time, on-call nature of the work and the fact that the employer continued to provide the part-time on-call employment during the period that began March 14, 2021. This employer's account will not be charged for the benefits paid for the period beginning March 14, 2021. The determination that the claimant is not partially unemployed from this employment does not prevent the claimant from meeting the availability requirement. Accordingly, the claimant is eligible for benefits for the period beginning March 14, 2021, provided the claimant meets all other eligible requirements.

DECISION:

The June 10, 2021, reference 01, decision is modified in favor of the employer/appellant as follows. The claimant has not been temporarily or partially unemployed from Venuworks of Cedar Rapids, L.L.C. since March 14, 2021. For that reason, this employer's account will not be charged for benefits for the period beginning March 14, 2021. The determination that the claimant is not partially unemployed from this employment does not prevent the claimant from meeting the availability requirement. Accordingly, the claimant is eligible for benefits for the period beginning March 14, 2021, provided the claimant meets all other eligible requirements.



James E. Timberland
Administrative Law Judge

November 8, 2021
Decision Dated and Mailed

jet/kmj