

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**OSCAR D RIVAS**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 20A-UI-03624-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On May 1, 2020, Oscar Rivas (claimant/appellant) filed a timely appeal from the April 21, 2020 (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 20, 2020. The parties were properly notified of the hearing. Claimant participated personally. Fareway Stores Inc (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in approximately 2012. He began working at the location where he is currently employed in the summer of 2019. Claimant is still employed by employer part-time as a clerk. Claimant's hours vary but are typically between 20 and 30 hours per week. Claimant's immediate supervisor is Brian Smith.

Claimant was temporarily laid off from employer starting April 14, 2020 and continuing until May 21, 2020. Employer removed claimant from the schedule for safety reasons, as he became ill and it was suspected it may be related to the pandemic.

Claimant stated there might have been a guarantee of hours but if there was, it was minimal. He guessed it was somewhere between ten and 18 hours per week at employer. However, claimant provided no proof of such a guarantee, such as a contract of employment, employee handbook, or paystubs. Claimant's wage history indicates his hours have fluctuated significantly with employer during the base period, from the first quarter of 2019 through the fourth quarter of 2020. In the first quarter of 2019, wages of \$3,309.00 were reported; wages in the second quarter were \$1,387.00; wages in the third quarter were \$5,386.00; and wages in the fourth quarter were \$6,338.00.

Claimant testified he had another job at a restaurant, Tursi's Latin King, where he worked approximately 30-40 hours per week. He was laid off from that job March 14, 2020, due to the pandemic. However, the wages reported to IWD show Fareway was claimant's main source of income during the base period. He had approximately \$18,000 in wages reported for Fareway, and approximately \$6,000 reported from other employers. Claimant had no wages from Tursi's Latin King during the base period.

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

For the reasons that follow, the April 21, 2020 (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits is **AFFIRMED**.

The administrative law judge notes claimant may well be eligible for Pandemic Unemployment Assistance Benefits (PUA) during the time in question. More information on that program is set forth at the end of the opinion.

I. Is the claimant totally, partially, or temporarily unemployed?

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.

The administrative law judge finds claimant is not totally, partially, or temporarily unemployed. This is because claimant is still employed by employer and his position is not a full-time position.

II. Is the claimant able to and available for work?

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. 871-24.23(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.

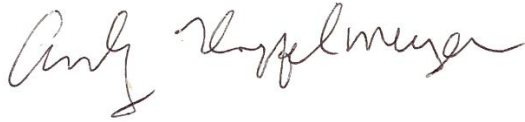
The administrative law judge finds claimant is still employed by employer in a part-time job at the same hours and wages as contemplated in the original contract for hire. As noted above, claimant was unsure of whether there was a minimal hour guarantee and provided no proof of such a guarantee. His wage history supports that there was no such guarantee, as it fluctuated greatly over the base period. Because claimant was still employed by employer during the period in question in the same way as he had been in the past, he was not able to and available for work during that time.

III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

Because claimant is not unemployed and is not able to and available for work during the period in question, this issue need not be addressed.

**DECISION:**

The April 21, 2020 (reference 01) unemployment insurance decision is AFFIRMED. Claimant is ineligible for benefits effective March 22, 2020.



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

May 28, 2020  
Decision Dated and Mailed

abd/mh

*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 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>.