

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ALEX TAGUE**

Claimant

**THE UNIVERSITY OF IOWA**

Employer

**APPEAL NO. 21A-UI-05162-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/06/20  
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 9, 2021, reference 02, decision that denied benefits effective December 6, 2020, based on the deputy's conclusion that the claimant was still employed with the same hours and wages and not partially unemployed. After due notice was issued, a hearing was held on April 20, 2021. Claimant participated. Jessica Wade represented the employer. Exhibits 1 and A were received into evidenced. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A, and the February 10, 2021, reference 01, decision.

The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit a complete work search log. The claimant submitted the log on April 21, 2021 and it was received into evidence as Exhibit B.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning December 6, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning December 6, 2020.

Whether the employer's account may be charged for benefits for the period beginning December 6, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that Iowa Workforce Development deemed effective December 6, 2020. The claimant established the original claim for benefits in response to being discharged on December 8, 2020 from employment with The University of Iowa. The claimant worked 176 hours for the employer during the benefit week that ended December 12, 2020 for which he was paid \$339.84 (\$21.24 x 16). IWD deemed the discharge to be for no disqualifying reason, allowed benefits, provided the claimant was otherwise eligible, and held the employer's account could be charged. See the February 10, 2020, reference 01,

decision. The University of Iowa has had no further work for the claimant since December 8, 2020.

As of the April 20, 2021 appeal hearing date, the claimant had made weekly claims for each of the weeks between December 6, 2020 and April 3, 2021. The claimant has consistently made and reported two job contacts per week. The claimant had worked for The University of Iowa as a Bioengineering Equipment Technician, completed an Associate of Applied Science (A.A.S) degree related to the field, and has remained interested in securing similar employment. While the claimant has cast a broad net in search of another position in specialized field, the claimant has sought other types of employment, and recently accepted two part-time employments. On or about March 1, 2021, the claimant began part-time employment with Zio Johnno's restaurant. That employment has provide about 20 hours of work per week and pays \$10.00 per hour. On April 1, 2021, the claimant began a second part-time employment at Arby's. The Arby's employment provides around 20 hours per week. Between the two employments, the claimant has been working about 40 hours per week since April 1, 2021.

The claimant has been able to perform full-time work since he established his claim for benefits.

### **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 r. 871-24.23(23) provides:

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

(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.

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

The claimant has been able to work since he established his claim for benefits. Since December 8, 2020, the claimant has been separated from the University of Iowa Employment and has no work and earned no pay with that employer. The claimant was available for work within the meaning of the law during the period of December 6, 2020 through April 3, 2021 and is eligible for benefits for that period. Since April 4, 2021, the claimant's been in two part-time employments that together provide about 40 hours per week, the equivalent of full-time employment. Because the claimant has been essentially working full-time, the claimant no longer meets the unemployment insurance "availability" requirement effective April 4, 2021 and is not eligible for benefits for the period beginning April 4, 2021. Iowa Workforce Development previously determined through the February 10, 2021, reference 01, decision that the employer's account may be charged for benefits paid to the claimant. That determination remains in effect.

**DECISION:**

The February 9, 2021, reference 02, decision is modified in favor of the claimant/appellant as follows. The claimant separated from this employer effective December 8, 2020. The claimant was able to work and available for work during the period of December 6, 2020 through April 3, 2021 and is eligible for benefits for that period, provided he is otherwise eligible. Effective April 4, 2021, the claimant was no longer unemployed within the meaning of the law in light of the combined full-time work hours, did not meet the "availability" requirement, and is not eligible for benefits. The employer's account may be charged for benefits for those weeks during which the claimant met the eligibility requirements.



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James E. Timberland  
Administrative Law Judge

May 03, 2021  
Decision Dated and Mailed

jet/ol