

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES A ANDREWS
Claimant

BLB DELIVERY
Employer

APPEAL 18A-UI-09732-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/19/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 21, 2018, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2018. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to work and available for work effective August 19, 2018?
Does the claimant meet the definition of being considered partially unemployed?
Is the claimant still employed at the same hours and wages?
Is claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has full-time wages in his base period. Claimant began working for employer on July 1, 2018, as a full-time delivery driver. Claimant was temporarily laid off due to lack of work on August 20, 2018. Claimant has no medical restrictions or other restrictions on his ability to or availability for work. Employer has recalled claimant to return to work in November 2018, but claimant has not decided yet whether he will return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally and temporarily unemployed effective August 20, 2018.

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 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.

Claimant is not an on-call worker. In this case, claimant is a totally and temporarily unemployed full-time worker. Claimant does not have any medical restrictions or other restrictions on his availability for work with employer and did not decline work or request reduced hours with employer after August 19, 2018. Therefore, claimant is eligible for benefits and the issue regarding whether claimant is working at the same hours and wages is moot and will not be discussed further in this decision.

The parties should notify Iowa Workforce Development if claimant does not return to work in November 2018 or otherwise declines work or becomes permanently separated from employer.

DECISION:

The September 21, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is totally and temporarily unemployed and benefits are allowed, provided claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn