

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROL J HETH
Claimant

VOLT MANAGEMENT CORP
Employer

APPEAL 24A-UI-01476-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/18/22
Claimant: Appellant (4-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On February 6, 2024, claimant Carol J. Heth filed an appeal from the February 2, 2024 (reference 01) unemployment insurance decision that denied benefits effective December 17, 2023, determining claimant was still employed at the same wages as contemplated at hire and was not available for work. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on February 9, 2024. Administrative Law Judge Elizabeth A. Johnson held an in-person hearing in Waterloo at 1:30 p.m. on Monday, February 19, 2024. Claimant Carol J. Heth participated. Employer Volt Management Corporation did not appear and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for Volt Management Corporation for approximately fifteen years. She works full-time hours in the office. Each year, the employer shuts down the office for approximately ten days over the Christmas and New Year's Day holidays. During this time, it instructs all employees to file for unemployment insurance benefits.

Claimant opened her claim for benefits effective December 18, 2022, when she was preparing to be laid off over the holidays. Iowa Workforce Development ("IWD") calculated claimant's weekly benefit amount at \$500.00 for this benefit year, based on her base period wages. She filed weekly continued claims for several weeks, last filing the week ending January 7, 2023. She then returned to full-time employment and stopped filing weekly claims.

Claimant reopened her claim effective December 10, 2023, in preparation for the upcoming seasonal layoff. She filed a weekly continued claim for benefits for the week ending December 16, 2023, reporting \$1,091.00 in gross wages. Claimant received no benefits that week.

The following week, claimant opened a new claim as it was the first week of a new benefit year. She opened her new claim effective December 17, 2023. IWD calculated claimant's weekly benefit amount at \$582.00 for this benefit year. Claimant filed weekly continued claims each week from the week ending December 23, 2023; through the week ending February 10, 2023. Claimant is only seeking benefits for the week ending December 30, 2023, as that is the week she was on temporary layoff. Claimant worked no hours and reported no wages that week.

When claimant filed her claim for the week ending January 20, 2024, she reported \$248.00 in wages/holiday pay. She also self-reported she was not able to and available for work that week. Claimant explained she was on vacation that week and that it was her choice not to work. She is not seeking benefits for the week ending January 20, 2024. Claimant only continued filing claims after the temporary layoff because the appeal instructions advise parties to continue filing claims while the appeal is pending.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is eligible for benefits for the week ending December 30, 2023.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

Benefit 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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Code § 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.

An individual claiming benefits has the burden of proving they are able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. An individual who is temporarily unemployed is not required to establish their ability to work and availability for work. Iowa Code § 96.4(3).

Here, the record shows claimant was temporarily totally unemployed during the week ending December 30, 2023. This temporary total unemployment was caused by her employer closing the office for the Christmas and New Year's holidays. During this brief closure, the employer had no work available for claimant. Benefits for this week are allowed.

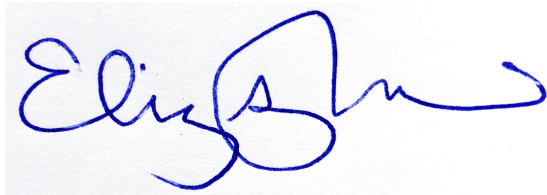
Claimant admits that during the week ending January 20, 2024, she voluntarily left work for a week to take a personal vacation. This week, claimant's wages were reduced by her choice, not due to a lack of work offered from her employer. Claimant is not eligible for benefits this week.

Claimant is not monetarily eligible for benefits any other week she filed for benefits, as her earnings exceed her weekly benefit amount plus fifteen dollars.

DECISION:

The February 2, 2024 (reference 01) unemployment insurance decision is modified in favor of the claimant/appellant. Claimant was totally unemployed during the one-week period ending December 30, 2023. Benefits for that one week are allowed. Benefits for all other weeks are denied, as claimant was employed full-time.

REMAND: This matter is remanded to the Benefits Bureau of Iowa Workforce Development to ensure claimant receives her payment for the one week ending December 30, 2023.



Elizabeth A. Johnson
Administrative Law Judge

February 22, 2024
Decision Dated and Mailed

lj/lj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.