

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MORGAN L DRAIOCHT
Claimant

APPEAL NO. 21A-UI-16872-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VENUWORKS OF CEDAR RAPIDS LLC
Employer

**OC: 03/28/21
Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 21, 2021, reference 01, decision that allowed benefits to the claimant for the period beginning March 28, 2021, provided the claimant was otherwise eligible. The decision stated 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 September 22, 2021. Claimant, Morgan Draiocht, did not provide a telephone number for the hearing and did not participate. Sean Meloy, Director of Finance, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A, WAGE-B and WAGE-C.

ISSUES:

Whether the claimant was able to work and available for work during the period of March 28, 2021 through May 1, 2021.

Whether the claimant was partially and/or temporarily unemployed during the period of March 28, 2021 through May 1, 2021.

Whether this employer's account may be charged for benefits for the period of March 28, 2021 through May 1, 2021.

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 was effective March 28, 2021. Iowa Workforce Development set the weekly benefit amount at \$434.00. The claimant made weekly claims for each of the weeks between March 28, 2021 and May 1, 2021. For the week that ended April 3, 2020, the claimant reported she was not working and that she earned zero wages. For the week the ended April 10, the claimant reported she was working and earned \$140.00 in wages. For the week that ended April 17, the claimant reported she was working and earned \$308.00 in wages. For the weeks that ended April 24 and May 1, the claimant reported that she was working and reported wages that exceeded her weekly benefit amount by more than \$15.00.

The claimant's work for Venuworks of Cedar Rapids, Inc. as a part-time, on-call stagehand has all been premised on the claimant's status as a member of the International Alliance of Theatrical Stage Employees (IATSE) Local 191. There has never been a guarantee of work or work hours. When Venuworks needs stagehands for one of its four Cedar Rapids venues, the company notifies Local 191 and Local 191 selects the laborers who will assist with the event. The selection is based on union seniority rank. Venuworks has never contacted the claimant directly to offer work.

The claimant commenced performing work for Venuworks of Cedar Rapids during the second quarter of 2019. Though the employer asserts the claimant began in 2018, Iowa Workforce Development has no record of this employer reporting wages paid to the claimant during the second quarter of 2019. Once a member of Local 191 performs work for Venuworks, the employer does not remove the employee from payroll unless the employee terminates his or her membership in Local 191. After the claimant performed work for Venuworks during the fourth quarter of 2019, Local 191 did not again include the claimant as a stage hand for the employer's events until July 3, 2021. Venuworks continued to hold events on a regular basis until March 2020, at which time the COVID-19 pandemic prompted a temporary suspension of entertainment events. Venuworks began to hold events again in October 2020. Thereafter, the number of entertainment events increased until Venuworks returned to normal operations in June or July 2021. Venuworks has not changed the conditions of the employment and continues to have part-time, on-call work for the claimant when Local 191 chooses the claimant to assist with an event.

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(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 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 was not temporarily laid off or partially unemployed from this employer during the period of March 29, 2021 through May 1, 2021. Throughout that time, this employer continued to have the same part-time, on-call work available to the claimant as in the original contract of hire and the base period. This employer's account will not be charged for benefits for the period

of March 29, 2021 through May 1, 2021. The determination that the claimant was not temporarily laid off or partially unemployed from this employer does not prevent the claimant from meeting the able and available requirements, provided the claimant meets all other eligibility requirements. However, because the claimant's weekly wages for the weeks that ended April 24 and May 1, 2021 exceeded her weekly benefit amount by more than \$15.00, the claimant cannot be deemed unemployed during those weeks and is not eligible for benefits for those weeks.

DECISION:

The July 21, 2021, reference 01, decision is modified in favor of the employer/appellant as follows. The claimant was not temporarily laid off or partially unemployed from this employer during the period of March 29, 2021 through May 1, 2021. This employer's account will not be charged for benefits for the period of March 29, 2021 through May 1, 2021. The determination that the claimant was not temporarily laid off or partially unemployed from this employer does not prevent the claimant from meeting the able and available requirements, provided the claimant meets all other eligibility requirements. However, because the claimant's weekly wages for the weeks that ended April 24 and May 1, 2021 exceeded her weekly benefit amount for those weeks, the claimant cannot be deemed unemployed during those two weeks and is not eligible for benefits for those weeks.



James E. Timberland
Administrative Law Judge

September 28, 2021
Decision Dated and Mailed

jet/mh