

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

**ANDREW Y RUIZ**

Claimant

**APPEAL 23A-UI-07163-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDERS SALES & SERVICE CO**

Employer

**OC: 06/11/23**

**Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 13, 2023 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon him being still employed for the same hours and same wages as his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2023. The claimant did not participate personally. The employer participated on behalf of the claimant through witness, Gail Dunahoo. Claimant provided written documentation to the administrative law judge that Ms. Dunahoo may speak on behalf of the claimant. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant able to and available for work?

Was the claimant totally, partially, or temporarily unemployed?

Was the claimant still employed at the same hours and same wages?

Was the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits with an effective date of June 11, 2023. Claimant has worked for this employer as a full-time apprentice carpenter since February 7, 2023 and remains employed to date. His typical work schedule is Monday through Friday from 7:00 a.m. to 3:30 p.m. each day.

From June 12, 2023 to June 16, 2023, the claimant attended apprenticeship training classes each day from 7:00 a.m. to 3:30 p.m. instead of working. The classes were needed to maintain his employment with this employer. The employer did not have a plant shutdown, vacation, lack of work or lack of inventory that week in question. If the claimant was not attending the apprenticeship class, there would have been work available for him. Claimant did not earn any wages, vacation pay, holiday pay or other earnings that week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

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.

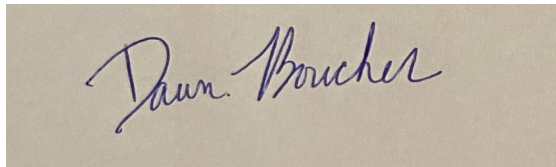
(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good

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.

In this case, the claimant was attending class full-time during the week of Monday June 12, 2023, through Friday June 16, 2023. He was totally unemployed as defined in Iowa Code section 96.1A(37) because he did not earn any wages during that period. As such, Iowa Code section 96.4(3) requires him to be able to and available for work. He was not able to and available for work because he was attending classes full-time during the week of June 12, 2023, through June 16, 2023. Benefits are denied effective his original claim date of June 11, 2023, as the claimant was not able to and available for work.

**DECISION:**

The July 13, 2023 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was not able to and available for work effective June 11, 2023. Benefits are denied effective June 11, 2023, until he establishes that he is able to and available for full-time work and becomes totally, partially or temporarily unemployed.



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Dawn Boucher  
Administrative Law Judge

August 30, 2023  
Decision Dated and Mailed

db/scn

**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:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

**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 file a petition for judicial review in district court.

2. If you do not file 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 [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**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:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**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.