

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ANTONIO M LOVE
Claimant

APPEAL NO: 19A-UI-00973-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

**OC: 01/13/19
Claimant: Respondent (4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications/Same Hours and Wages I

STATEMENT OF THE CASE:

The employer filed an appeal from the January 29, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 18, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Teah Shirk, Employment Coordinator. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective January 13, 2019?
Does the claimant meet the definition of being considered partially unemployed?
Is the claimant working the same hours and wages for which he was hired?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a truck loader/unloader with no guarantee or set number of hours each week. He established a claim for benefits on January 13, 2019, but did not make weekly claims for the weeks ending January 19 or January 26, 2019. He was temporarily laid off during this time. He was advised by management to return to work on Monday, January 28, 2019. Had he returned, continuing work was available to him.

The claimant did not contact the employer to report an absence or alternately return to work for the week ending February 2, 2019, for unknown reasons. He did file a weekly claim for benefits and received benefits. He also filed a weekly claim for the week ending February 9, 2019 and received benefits.

The claimant permanently separated from employment on February 4, 2019. That separation has not yet been adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was temporarily laid off due to a lack of work January 13, 2019 through January 26, 2019. Benefits are allowed, provided he meets all other requirements for this period only.

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.

The claimant was temporarily laid off due to a lack of work January 13, 2019 through January 26, 2019, but did not make weekly continued claims for that period. At this time, benefits cannot be paid for the two week period in question, because no claims are on file for the period, even though the claimant would be allowed benefits based upon the layoff.

Effective January 27, 2019, the claimant is ineligible to receive benefits. For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law.

Iowa Admin. Code r. 871-24.23(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

The undisputed evidence is the employer notified the claimant to return to work effective January 28, 2019, and he did not return for unknown reasons. He did, however, file a claim for unemployment insurance benefits for the period of January 27, 2019 through February 9, 2019 representing he was unemployed. Work was available with this employer effective January 27, 2019, but the claimant was not available to work. Therefore, the administrative law judge concludes the claimant has not proven that he meets the availability requirements under Iowa law. Accordingly, benefits are denied effective January 27, 2019.

REMAND: The issues of overpayment and the claimant's permanent separation from this employer are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The January 29, 2019, (reference 02) decision is modified. The claimant was temporarily laid off from work January 13 through January 26, 2019. Benefits are allowed, provided he is otherwise eligible. (At this time, no claims are on file for January 13 through 26, 2019.)

The claimant is ineligible for benefits beginning January 27, 2019 because he does not meet the availability requirements.

REMAND: The issues of overpayment and the claimant's permanent separation from this employer are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn