

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYSON J VANDER LINDEN
Claimant

JASPER CONSTRUCTION SERVICES INC
Employer

APPEAL 20A-UI-07993-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On July 6, 2020, Tyson Vander Linden (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 30, 2020 (reference 01) that denied benefits based on a finding that claimant was still employed for the same hours and wages as in his contract of hire.

A telephone hearing was held on August 19, 2020. The parties were properly notified of the hearing. Claimant was represented and participated by his mother, Amber Vander Linden. Jasper Construction Services Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Claimant's exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on May 30, 2017. Claimant separated from employment with employer on August 2, 2019, when his contract ended. Claimant just worked summers for employer.

Claimant was subsequently employed by Hall Construction LLC, beginning in the first quarter and continuing into the second quarter of 2020. Claimant was regularly employed there prior to the benefit week ending May 9, 2020. Claimant was able to and available for work that week. However, his supervisor at Hall ordered him to stay home that week because he had COVID-like symptoms. Claimant was not paid for work this week. Claimant subsequently accepted and

began employment for another employer, where he continued working until recently returning to school.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated June 30, 2020 (reference 01) that denied benefits is REVERSED. Claimant is eligible for benefits for the benefit week ending May 9, 2020. Claimant was totally unemployed that week despite being able to and available for work. Claimant was not available for work after that point, as he was employed to such an extent that he had removed himself from the labor market.

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.

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 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

- a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

Claimant is eligible for benefits for the benefit week ending May 9, 2020. Claimant was totally unemployed that week despite being able to and available for work. Claimant was not available for work after that point, as he was employed to such an extent that he had removed himself from the labor market and subsequently because he had returned to school. The employer here should not be charged, as the period of unemployment was only for one week and charges for benefits are in inverse chronological order.

DECISION:

The June 30, 2020 (reference 01) that denied benefits is REVERSED. Claimant is eligible for benefits for the benefit week ending May 9, 2020. Claimant was totally unemployed that week despite being able to and available for work. Claimant was not available for work after that point, as he was employed to such an extent that he had removed himself from the labor market.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 25, 2020
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.