

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGE A FRY
Claimant

APPEAL 19A-UI-01226-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENVER FINDLEY & SON INC
Employer

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

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
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
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the January 31, 2019, (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was still employed on a part-time basis. The parties were properly notified of the hearing. A telephonic hearing was held on February 27, 2019. The claimant, George A. Fry, participated. The employer, Denver Findley & Son, Inc., participated through Glenda Warner, Office Manager. Employer's Exhibits 1 through 5 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant partially unemployed effective January 13, 2019?
Is the claimant available for work effective January 13, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a truck driver, beginning November 15, 2018. Claimant last reported to work January 11, 2019. He was not called for any assignments after that date. Claimant has subsequently separated from employment with this employer. This separation has not yet been the subject of a fact-finding interview.

Claimant has been available for work since January 13, 2019. He has been in town and actively seeking work. Claimant has a Class A CDL and has applied for a variety of truck-driving jobs. On February 26, 2019, claimant was diagnosed with Influenza A. This is a highly contagious illness, and claimant was told this illness will last five days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is totally unemployed. Claimant is not currently physically able to work.

Iowa Code § 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 § 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has not performed services or earned wages for any week he has claimed benefits. The parties agree that claimant last reported to work on January 11, 2019, prior to his claim date. The evidence in this case shows that claimant is totally unemployed. Because he is totally unemployed, he may be eligible for unemployment insurance benefits.

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

In order to be eligible for unemployment insurance benefits, an individual must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant's testimony establishes that he is not currently physically able to work, as he has been diagnosed with a highly contagious illness. Therefore, benefits are withheld effective February 24, 2019, until such time as the claimant obtains a medical release to return to some type of work that he is capable of performing given his education, training, and work experience. This matter will be remanded for further investigation of claimant's separation from employment.

DECISION:

The January 31, 2019, (reference 02) unemployment insurance decision is modified in favor of the appellant/employer. Claimant is totally unemployed. He is not physically able to work effective February 24, 2019. Benefits are withheld until claimant obtains a medical release to return to some type of work that he is capable of performing.

REMAND:

The issue of claimant's separation from this employer as delineated above is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn