

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEMARCO T CLAYTON
Claimant

QPS EMPLOYMENT GROUP INC
Employer

**APPEAL 21A-UI-08963-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/25/20
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On March 26, 2021, QPS Employment Group, Inc. (employer/appellant) filed a timely appeal from the March 19, 2021 (reference 05) unemployment insurance decision that determined claimant was eligible for benefits beginning October 25, 2020 based on a finding claimant was able and available for work.

A telephone hearing was held on June 15, 2021. The parties were properly notified of the hearing. Demarco Clayton (claimant/respondent) did not register a number for the hearing or participate. Employer participated by Unemployment Coordinator Heather Wenthur. Branch Supervisor Kelly Lochray participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

FINDINGS OF FACT:

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

Claimant began working for employer in 2016. Claimant was employed as a temporary worker, where assignments would be offered to him which he could choose to accept or reject. Claimant filed a claim for benefits in the week ending October 31, 2020. Claimant was not on an assignment for employer in that week. There were assignments available to him that week if he had requested and made himself available for assignment. Claimant has not filed a weekly claim for benefits since that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the March 19, 2021 (reference 05) unemployment insurance decision that determined claimant was eligible for benefits beginning October 25, 2020 based on a finding claimant was able and available for work is REVERSED.

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 96.19(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 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 reduce workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Claimant filed a claim for benefits in the week ending October 31, 2020. Claimant was not on an assignment for employer in that week. There were assignments available to him that week if he had requested and made himself available for assignment. Because claimant was still employed by employer in the same way and did not request or make himself available for work with employer during the week filed, he is not eligible for benefits in that week.

DECISION:

The March 19, 2021 (reference 05) unemployment insurance decision that determined claimant was eligible for benefits beginning October 25, 2020 based on a finding claimant was able and available for work is REVERSED. Claimant is not eligible for benefits in the week filed.



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

June 28, 2021
Decision Dated and Mailed

abd/ol

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 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>.