

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

WADE A BUSS

Claimant

HAYES BUSINESS GROUP LLC

Employer

APPEAL NO. 23A-UI-08891-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/23

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On September 18, 2023, Wade Buss (claimant) filed a timely appeal from the September 14, 2023 (reference 03) decision that denied benefits for the period beginning July 30, 2023, based on the deputy's conclusion the claimant was unable to work due to injury. After due notice was issued, a hearing was held on October 3, 2023. Claimant participated. Misty Channel represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: KCCO, DBRO, and WAGEA.

ISSUES:

Whether the claimant was able to work and available for work during the five weeks between July 30, 2023 and September 2, 2023.

Whether the claimant was partially and/or temporarily unemployed work during the five weeks between July 30, 2023 and September 2, 2023.

Whether the employer's account may be charged for benefits for any or all of the five weeks between July 30, 2023 and September 2, 2023.

FINDINGS OF FACT:

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

Wade Buss (claimant) established an original claim for benefits that was effective January 29, 2023 and an additional claim for benefits that was effective July 30, 2023. Iowa Workforce Development set the weekly benefit amount at \$413.00. In connection with the July 30, 2023 additional claim, the claimant made weekly claims for the five weeks ending August 5, August 12, August 19, August 26, and September 2, 2023.

The claimant has at all relevant times been employed by Hayes Business Group, L.L.C. as a full-time forklift operator. The claimant's usual work hours during the relevant period were 6:30 a.m. to 3:00 p.m., Monday through Friday. Since January 1, 2023, the claimant's hourly wage has been \$15.50.

During the work week of July 24 through July 28, 2023, the employer temporarily laid off the claimant while the employer worked to repair a broken machine. The claimant returned to work on Monday, July 31, 2023 and worked full-time hours that week that ended August 5, 2023. The claimant earned \$620.00 in full-time wages for that week. During the week that ended August 12, 2023, the employer continued to have full-time work available. During that week, the claimant worked 31 hours and used eight hours of vacation pay. The wages earned for the 31 hours of work totaled \$480.50 and the vacation pay totaled \$124.00, for a combined total of \$604.50. During the weeks that ended August 19 and August 26, 2023, the employer temporarily laid off the claimant as part of a plant-wide temporary layoff.

The claimant was supposed to return to work on Monday, August 28, 2023. The employer had full-time work for the claimant during that week that ended September 2, 2023.

On August 28, 2023, the claimant notified the employer that he had suffered a significant burn at home. The claimant had suffered a second degree burn to his leg. The claimant provided the employer a medical note that indicated he was unable to return to work until September 11, 2023. The claimant earned no wages and used no vacation pay for the week that ended September 2, 2023.

The claimant continued off work during the week of that ended September 9, 2023 and used 40 hours of vacation pay for that week. The claimant did not make a weekly claim for this week or for subsequent weeks.

On September 11, 2023, the claimant returned to the full-time employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3)(a) provides as follows:

96.4 Required findings. 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 Admin. Code r. 871-24.22(1)(a) and (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.

(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.

...

(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.

Iowa Admin. Code r. 871-24.23(1), (23) and (35) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Code section 96.1A(37) 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.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant is not eligible for benefits for the weeks ending August 5 and August 12, 2023. During the week ending August 5, 2023, the claimant worked full-time and earned full-time wages. Based on the full-time employment, the claimant did not meet the unemployment insurance "availability" requirement. During that week, the claimant was neither temporarily nor partially unemployed. During the week that ended August 12, 2023, the employer had full-time work available. During that week, the claimant worked four days (31 hours) and earned regular wages that exceeded his weekly benefit amount plus \$15.00. In lieu of working the fifth day the employer had for the claimant, the claimant used a day of vacation pay (\$124.00). Based on the availability of full-time work, the hours worked and the wages earned, the claimant did not meet the unemployment insurance availability requirement and was neither temporarily nor partially unemployed.

The claimant is eligible for benefits for the weeks ending August 19 and August 26, 2023, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid for those two weeks. During those two weeks, the claimant was able to work, available for work, and temporarily laid off as part of the plant-wide temporary layoff.

The claimant is not eligible for benefits for the week that ended September 2, 2023. During that week, the employer had full-time work available. The claimant was not able to work and not available for work during that week due to a non-work-related injury. The claimant was under the care of a physician who had taken the claimant off work for the entirety of that week.

DECISION:

The September 14, 2023 (reference 03) decision is MODIFIED in favor of the claim as follows. During the weeks that ended August 5 and August 12, 2023, the claimant did not meet the availability requirement, was neither temporarily nor partially unemployed, and was not eligible for benefits. During that weeks that ended August 19 and August 26, 2023, the claimant was temporarily laid off, was able and available for work, and was eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits for those two weeks. During the week that ended September 2, 2023, the claimant was not able and not available for work, was neither temporarily nor partially laid off, and was not eligible for benefits.



James E. Timberland
Administrative Law Judge

October 5, 2023
Decision Dated and Mailed

JET/jkb

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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**

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.

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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.