

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN M SMITH
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 21A-UI-05732-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On February 19, 2021, Shawn Smith (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated February 17, 2021 (reference 07) that denied benefits as of January 3, 2021 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on April 28, 2021. The parties were properly notified of the hearing. Claimant participated personally. Team Staffing Solutions Inc. (employer/respondent) participated by Risk Manager Sarah Fiedler.

Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant began working for employer on February 4, 2020. Claimant is still employed by employer and is assigned as a full-time as a production labor position.

There were reduced hours available for claimant in the weeks ending December 26, 2020 and January 2, 2021, due to a holiday shutdown. Claimant worked 30 hours and received 10 hours of holiday pay in the week ending December 26, 2020, for gross wages of approximately \$450.00. He had 10 hours of holiday pay for the week ending January 2, 2021, for gross wages of \$122.50. He had 55.5 hours of work for the week ending January 9, 2021, for gross wages of \$711.64.

Claimant did not file a claim for benefits for the weeks ending December 26, 2020 or January 2, 2021. Claimant did file a claim for benefits in the week ending January 9, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated February 17, 2021 (reference 07) that denied benefits as of January 3, 2021 based on a finding claimant was still employed for the same hours and wages is AFFIRMED.

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.

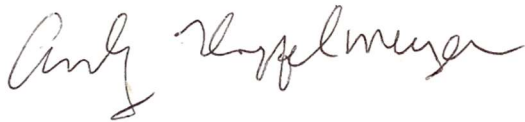
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

While there was less work available for claimant in the weeks ending December 26, 2020 and January 2, 2021, he did not file weekly claims in those weeks and is therefore ineligible for benefits in those weeks. Claimant did file a claim for benefits in the week ending January 9, 2021. However, he was employed full-time in that week and earned well beyond his weekly benefit amount plus \$15.00. He is therefore ineligible for benefits in that week as well.

DECISION:

The decision dated February 17, 2021 (reference 07) that denied benefits as of January 3, 2021 based on a finding claimant was still employed for the same hours and wages is **AFFIRMED**.



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

May 6, 2021
Decision Dated and Mailed

abd/kmj

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>.