

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD A HESS

Claimant

APPEAL 22A-UI-03515-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP

Employer

OC: 05/16/21

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871—24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant, Richard A. Hess, filed an appeal from the January 18, 2022, (reference 02) unemployment insurance decision that denied benefits effective December 12, 2021, based on the determination that claimant was not partially unemployed. The parties were properly notified of the hearing. A telephone hearing was held on March 7, 2022. The claimant participated personally. The employer, Per Mar Security & Research Corp, did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially or temporarily unemployed?
Is the claimant able to and available for work?
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 became employed as a security guard in May or June 2019. The employer contracts security work, so whether claimant is offered work is dependent on whether the employer has clients with which they can contract. Claimant last worked for the employer December 3, 2021, when the site where he was working—PMX Industries—no longer needed the employer's services, and claimant's employment ended.

Claimant was aware that his position at PMX Industries would likely end. Prior to that time, he inquired with the recruiter whether there was work available for him once that position ended. The recruiter told claimant that the employer had few clients and very little work was available. When the PMX Industries position ended, claimant again inquired whether the employer had work available for him; he was told no work was available. Claimant continued filing claims for

benefits from the week of December 12, 2021, through the week that ended February 12, 2022, when he took work offered by the employer for a few days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

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 96.1A, 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—24.23(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 reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

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.

(a) However, if the individual 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

From December 12, 2021, to February 12, 2022, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Claimant was absent from work because the employer had no work to offer claimant; claimant's unemployment was not voluntary. Claimant had no barriers to employment. Therefore, claimant was able to and available for work. Benefits are allowed.

Inasmuch as employer did not offer the same wages and hours as contemplated at hire, its account may be charged.

DECISION:

The January 18, 2022 (reference 02) unemployment insurance decision is reversed. Claimant was totally unemployed and able to and available for work from December 12, 2021, through February 12, 2022. Benefits are allowed for that period provided claimant is otherwise eligible. Employer's account (# 040781-000) may be charged.



Alexis D. Rowe
Administrative Law Judge

March 22, 2022
Decision Dated and Mailed

ar/mh