

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ALEJANDRO BONILLA**  
Claimant

**APPEAL NO. 20A-UI-09879-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J & M POULTRY SER**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (2R)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 5, 2020, reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 2, 2020. Claimant participated personally and with attorney Lorraine Gaynor. Employer participated by Melinda Roman.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant worked for J & M Poultry Service for the period between March 5, 2020 and April 15, 2020. Claimant was hired as a driver to transport workers to poultry operations when they were called into service. Claimant would also have the opportunity to provide vaccines to the poultry if he chose to do so. Claimant worked for employer for approximately six weeks, and during that time received widely varying hours and wages. Claimant was told at the time of hire that he would be called in advance of needs by employer. Claimant told employer that he needed to go work a different job on April 15, 2020.

At all times relevant while the claimant remained in the employ of employer, he was able and available for work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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

Because the claimant knew at the time of hire that he was not going to be given consistent hours at the time of hire, claimant is deemed to have worked the same hours and wages throughout his employment that ended on April 15, 2020. Claimant is not eligible to receive benefits from the time of filing his claim through April 15, 2020.

This matter will be remanded to the benefits bureau to determine if claimant has been overpaid any state or federal benefits in this matter.

This matter will be remanded to the fact finder to make an initial determination on the separation issue.

*Note to Claimant:* Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The August 5, 2020, reference 03, decision is affirmed. The claimant is not partially unemployed and benefits are denied for the period of time between March 22, 2020 and April 15, 2020. Unemployment benefits received by claimant during this timeframe are overpayments.

This matter will be remanded to the benefits bureau to determine if claimant has been overpaid any state or federal benefits in this matter.

This matter will be remanded to the fact finder to make an initial determination on the separation issue.



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Blair A. Bennett  
Administrative Law Judge

October 6, 2020  
Decision Dated and Mailed

bab/sam