

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MIGUEL A RODRIGUEZ**  
Claimant

**REMEDY INTELLIGENT STAFFING INC**  
Employer

**APPEAL 18A-UI-10798-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/30/18  
Claimant: Respondent (5R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Remedy Intelligent Staffing, Inc. (employer) filed an appeal from the October 22, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Miguel A. Rodriguez (claimant) is eligible for partial unemployment insurance benefits as he is still employed and working when hours are available. The parties were properly notified about the hearing. A telephone hearing was held on November 15, 2018. The claimant did not answer when called at the number registered for the hearing and did not participate. The employer participated through Onsite Manager Scott Swalla. No exhibits were offered into the record.

**ISSUES:**

Is the claimant totally or partially unemployed effective September 30, 2018?  
Is the claimant able to work, available for work, and actively and earnestly seeking work effective September 30, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a temporary full-time position as a Utility Worker beginning on September 21, 2017, and was separated from employment on October 5, 2018, when he was discharged. The claimant has not performed any other work for the employer. Whether the claimant's separation from this employer qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The claimant filed his claim for benefits effective September 30, 2018 and reopened his claim effective October 14, 2018. The claimant has filed weekly continued claims for unemployment insurance benefits for the four-week period beginning October 14 through the week ending

November 10. The claimant has not reported any wages earned during that time and reported he is able to work, available for work, and actively and earnestly seeking work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed. He is able to work, available for work, and actively and earnestly seeking work. Benefits are allowed, provided he is otherwise eligible.

Iowa Code § 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 § 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. 871-24.22 provides, in relevant part:

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.

...

(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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, there is no indication the claimant has performed any work during the weeks he has claimed benefits. Therefore, he is totally unemployed.

As he is totally unemployed, the claimant must be able to work, available for work, and actively and earnestly seeking work to remain eligible for unemployment insurance benefits each week. The claimant has reported he is able to work, available for work, and searching for work each week he has filed a continued claim for benefits. The employer does not have any information contradicting what the claimant has reported. Therefore, benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant's separation from this employer on October 5, 2018 qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

#### **DECISION:**

The October 22, 2018, reference 01, unemployment insurance decision is modified with no change in effect. The claimant is totally unemployed. He is able to work, available for work, and actively and earnestly seeking work. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The issue of whether the claimant's separation from this employer on October 5, 2018 qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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