

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LEON HENDERSON

Claimant

APPEAL NO. 19A-UI-03642-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS EMPLOYMENT PRO

Employer

OC: 03/31/19

Claimant: Respondent (2R)

Iowa Code section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 24, 2019, reference 03, decision that allowed benefits to the claimant effective March 31, 2019 provided he was otherwise eligible and that held the employer's account could be charged for benefits for the period beginning March 31, 2019, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on May 22, 2019. Claimant Leon Henderson did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Memie Amwoza represented the employer. Exhibit 1 and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether the claimant was able to work and available for work during the two-week period of March 31, 2019 through April 13, 2019.

Whether the claimant was partially unemployed during the two-week period of March 31, 2019 through April 13, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period of March 31, 2019 through April 13, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Leon Henderson established an original claim for unemployment insurance benefits that was effective March 31, 2019. Iowa Workforce Development categorized Mr. Henderson as a group 6 claimant, rather than a group 3, job-attached claimant. Mr. Henderson made weekly claims for the weeks ending April 6 and April 13, 2019 and then discontinued his claim. For each week, Mr. Henderson reported that he was not working, that he was able to work and available for work, that he had not refused an offer of employment, that he had made two employer contacts, and that he had no wages. Mr. Henderson received \$714.00 in benefits for the two-week period ending April 13, 2019.

At the time Mr. Henderson established his claim for benefits, he had most recently been employed by Express Employment Pros in a full-time temporary work assignment that began on January 17, 2019 and that ended on or about February 3, 2019. Mr. Henderson had been assigned to the day shift, either 6:00 a.m. to 2:30 p.m. or 7:00 a.m. to 3:30 p.m.

On April 2, 2019, Mr. Henderson stopped into the Express Employment Pros to update his employment materials. During that contact Mr. Henderson told Express representative Memie Amwoza that he was only available to work from noon to 4:00 p.m. Mr. Henderson did not tell the employer why he was restricting his availability to just those four hours per day.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

The evidence in the record fails to establish that Mr. Henderson was able and available for work or that he was partially and/or temporarily unemployed during the two-week period when his claim was active. Mr. Henderson did not participate in the appeal hearing and did not present any evidence to support the assertions in his weekly claims and to meet his burden of proving that he was able to work, available for work, and actively and earnestly seeking new employment during the weeks that ended April 6 and April 13, 2019. The evidence in the record establishes that Mr. Henderson unduly restricted his availability for work during the relevant two-week period. There is no evidence in the record to support the notion that Mr. Henderson was partially unemployed and/or temporarily unemployed within the meaning of the law during the two-week period in question. Benefits are denied for the two-week period of March 31, 2019 through April 13, 2019. Based on the able and available determination, the employer's account will not be charged for benefits for the two-week period ending April 13, 2019.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$714.00 in benefits that claimant received for the two-week period of March 31, 2019 through April 13, 2019.

DECISION:

The April 24, 2019, reference 03, decision is reversed. The claimant did not demonstrate that he was able to work, available for work and actively and earnestly seeking employment during the two-week period of March 31, 2019 through April 13, 2019. The claimant was not partially unemployed or temporarily unemployed within the meaning of the law during those two weeks. The claimant is not eligible for benefits for the two-week period of March 31, 2019 through April 13, 2019. Based on the able and available determination, the employer's account will not be charged for benefits for the two-week period ending April 13, 2019.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$714.00 in benefits the claimant received for the two-week period of March 31, 2019 through April 13, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs