

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERRITT E DANN
Claimant

CLINTON FORD LINCOLN MERCURY INC
Employer

APPEAL 20A-UI-12764-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
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 October 15, 2020, Merritt Dann (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 5, 2020 (reference 02) that denied benefits as of June 21, 2020 based on a finding claimant was still employed for the same hours and wages and was not partially unemployed.

A telephone hearing was held on December 14, 2020. The parties were properly notified of the hearing. Claimant participated personally. Clinton Ford Lincoln Mercury Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. 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 in September 2015. Claimant is still employed by employer. Claimant is employed full-time as a sales and leasing representative. Claimant hours have not reduced. However, he has experienced a significant drop in earnings. This is because claimant has sold fewer cars over the last several months and because his compensation is totally commission-based. The structure of claimant's commission-based compensation has not changed.

Claimant attributes the lack of sales to the pandemic. Specifically, there was a decline in new car manufacturing and there are fewer people interested in selling their used cars. This has meant a smaller inventory of cars available for sale, as well as fewer people shopping for and ultimately buying cars.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated October 5, 2020 (reference 02) that denied benefits as of June 21, 2020 based on a finding claimant was still employed for the same hours and wages and was not partially unemployed is AFFIRMED.

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 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".

Claimant is not totally, partially, or temporarily unemployed. Claimant hours have not reduced and the structure of claimant's commission-based compensation has not changed. While claimant is earning substantially less, this is simply due to the nature of his employment in sales and the economic downturn caused by the pandemic. He is therefore ineligible for benefits.

While this decision denies regular, state unemployment benefits, the administrative law judge notes claimant may be eligible for Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

DECISION:

The decision dated October 5, 2020 (reference 02) that denied benefits as of June 21, 2020 based on a finding claimant was still employed for the same hours and wages and was not partially unemployed is AFFIRMED.



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

December 22, 2020
Decision Dated and Mailed

abd/scn

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 currently 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>.