

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY VOSS
Claimant

SEVENTH AVENUE INC
Employer

APPEAL 21A-UI-13004-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Respondent (4-R)**

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the May 25, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 3, 2021. Claimant participated and testified. Employer participated through Senior Employment Coordinator Teah Shirk. The administrative law judge took official notice of the agency records.

ISSUE:

Is the claimant partially or totally unemployed?
Is claimant able to and available for work effective April 4, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant most recently began working for first as an intern and then as a full-time outbound assistant supervisor from June 2019 to April 21, 2021.

The claimant filed for benefits on April 4, 2021. The claimant left on a vacation to Utah and Nevada on April 1, 2021. He arrived back in Iowa on April 7, 2021. The claimant used 24 hours of paid time off to cover eight hour shifts occurring on April 5 – 7, 2021.

When he arrived on April 8, 2021, the claimant was instructed by the employer to quarantine for two weeks with the end date of the quarantine being April 22, 2021. Prior to the end of his quarantine, the claimant separated from employment on April 21, 2021. Work would have been available had the claimant not been subject to quarantine.

The claimant did not receive insured wages from other employers during his base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able and not available from week ending April 10, 2021. Benefits are denied for this week. The administrative law judge further concludes the claimant was able and available for work and totally unemployed for the weeks ending April 17, 2021 and April 24, 2021. Benefits are allowed for these weeks.

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.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was performed no work for the employer from April 5, 2021 to April 21, 2021.

He used paid time off to be out of town for personal reasons from April 5 -7, 2021, which disqualifies him for the week ending April 10, 2021 under Iowa Admin. Code r. 871-24.23 (25) and (29). Benefits are denied for this period.

After returning to Iowa on April 8, 2021, the claimant remained away from work until he was separated due to the employer's 12 day quarantine because he had been outside of the state. For this period, the claimant was not on a leave of absence Iowa Admin. Code r. 871-24.23(10). The claimant wanted to work. He was also not ill such to be disqualified under Iowa Admin. Code r. 871-24.23 (1). The claimant was able and available to work for this period. Benefits are

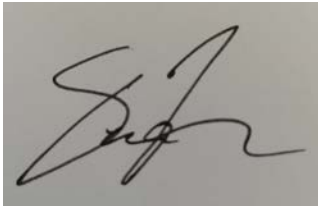
granted for the weeks ending April 17, 2021 and April 24, 2021. Benefits are provided for these weeks, provided the claimant is otherwise eligible.

DECISION:

The May 25, 2021, (reference 01), unemployment insurance decision is modified in favor of the appellant. The claimant was not able and available for the week ending April 10, 2021. Benefits are denied for this week. The claimant was able and available and totally unemployed for the weeks ending April 17 2021 and April 24, 2021. Benefits are granted for this week.

REMANDS:

The issue of whether the claimant's separation from employment on April 21, 2021 disqualifies him from benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination. The claimant's group code should be changed to "6."



Sean M. Nelson
Administrative Law Judge
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August 9, 2021
Decision Dated and Mailed

smn/scn