

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERCEDES M DAVIS

Claimant

STAFF MANAGEMENT SOLUTIONS LLC

Employer

APPEAL 21A-UI-09443-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/20

Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Mercedes M. Davis, filed an appeal from the March 24, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2021. The claimant participated personally. Mel Collins, mother of claimant, testified for claimant. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant totally, partially, or temporarily unemployed effective November 22, 2020?

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for this employer since 2018. Most recently, claimant worked on assignment at Proctor and Gamble as a stager/inspector. On November 24, 2020, claimant notified employer she was exposed to COVID-19 based upon family members testing positive for COVID-19. Claimant tested negative. Claimant’s doctor kept her off work to quarantine. On December 4, 2020, claimant contacted her manager, Sue, and asked if she should return to work. Sue said no and that she would contact claimant on December 7, 2020. Claimant never received any contact from Sue. Claimant made attempts to reach Sue and she did not respond. Claimant then contacted human resources and they directed claimant to contact her immediate manager,

Mr. Cano, and to “keep texting”. Claimant sent repeated text messages from her son’s phone to the employer, who did not respond to her. Claimant was able and available for work and did not refuse any offers of work.

Claimant then worked for Express Services from May 3-7, 2020 and Aeroek from May 13, 2021 through June 11, 2021. Administrative records reflect claimant began reporting wages effective April 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the initial decision in favor of claimant.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. “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 96.1A, subsection 38, paragraph "b", subparagraph (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".

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

From November 22-December 4, 2020: Claimant is not eligible for benefits for this period as she was under a doctor's care as a result of exposure to COVID-19. Claimant was not available for work, according to Iowa law. Regular state benefits are denied.

From December 5, 2020 -April 8, 2021: Claimant was totally unemployed. Claimant was able and available for work but employer did not offer work to claimant. Benefits are allowed, provided she is otherwise eligible.

The following issues are remanded to the Benefits Bureau for an investigation:

1. Claimant's permanent separation with this employer
2. Claimant's separation from Express Services on May 7, 2021
3. Claimant's separation from Aerotek effective June 11, 2021

DECISION:

The unemployment insurance decision dated March 24, 2021, (reference 01) is modified in favor of the claimant. The claimant was not able and available for work effective November 22, 2020 through December 4, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work. Claimant was able and available for work effective December 5, 2020 until April 8, 2020. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The following issues are remanded to the Benefits Bureau for an investigation:

1. Claimant's permanent separation with this employer
2. Claimant's separation from Express Services on May 7, 2021
3. Claimant's separation from Aerotek effective June 11, 2021



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

July 1, 2021
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits November 22, 2020 through December 4, 2020. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>