

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EBONI T BOYD

Claimant

APPEAL NO. 20A-UI-10236-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC

Employer

OC: 06/14/20

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Eboni Boyd filed a timely appeal from the August 25, 2020, reference 02, decision that denied benefits effective June 14, 2020, based on the deputy's conclusion that that Ms. Boyd was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on October 8, 2020. Ms. Boyd participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were received into the hearing record. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge left hearing record open for the remainder of October 8, 2020 to provide Ms. Boyd an opportunity to submit pay records for the period leading up to June 14, 2020 and for the period of June 14, 2020 through September 12, 2020. Ms. Boyd submitted records that the administrative law judge received into evidence as Exhibit C.

ISSUES:

Whether the claimant was able to work and available for work for the period of June 14, 2020 through September 12, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period of June 14, 2020 through September 12, 2020.

Whether the employer's account may be charged for benefits paid to the claimant for the period of June 14, 2020 through September 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eboni Boyd established an original claim for benefits that was effective June 14, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$481.00. Ms. Boyd made weekly claims each of the weeks between June 14, 2020 and September 12, 2020. Ms. Boyd reported wages as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>
06/20/20	.00
06/27/20	.00
07/04/20	336.00
07/11/20	288.00
07/18/20	192.00
07/25/20	144.00
08/01/20	156.00
08/08/20	156.00
08/15/20	.00
08/22/20	.00
08/29/20	204.00
09/05/20	100.00
09/12/20	467.00

Ms. Boyd was employed as full-time supervisor with REM until March 2020. Ms. Boyd had submitted notice that she would be leaving REM based on her acceptance of a full-time para-educator position with the Davenport Community School District. Ms. Boyd had worked 30 hours per week in the supervisor position. When COVID-19 hit in March 2020, the school district was unable to bring Ms. Boyd on as scheduled. Ms. Boyd contacted REM and entered into a new role as a full-time overnight care provider. The new position with REM paid \$12.00 per hour, whereas the supervisor position had paid \$15.00.

At the time, Ms. Boyd established the original claim for benefits that was effective June 14, 2020, she was working full-time on the REM overnight shift, but concluded she was not making enough money. During the week that ended June 20, 2020, Ms. Boyd worked full-time. Ms. Boyd did not report her wages for this week when she made her weekly claim.

From June 22, 2020 until June 30, 2020, Ms. Boyd was on an approved vacation.

Ms. Boyd was supposed to return from vacation and work her next overnight shift on the evening of June 30, 2020. However, on June 29, 2020, the REM program director notified her that the full-time overnight arrangement was no longer available. Thereafter the employer only had on-call work available for the Ms. Boyd. Ms. Boyd picked up work hours where possible. These picked up hours are reflected in the wages Ms. Boyd reported for the period of June 28, 2020 through September 5, 2020. The only time Ms. Boyd declined REM work during this period was when the employer asked her to work with a client whom Ms. Boyd knew to be very violent. Ms. Boyd was not willing to put herself in that situation.

During the weeks that ended August 15, 2020 and August 22, 2020, REM had no work available for Ms. Boyd.

Ms. Boyd was supposed to start the full-time job with the district on August 24, 2020, but the district pushed back the start day of school to September 8, 2020, the day after Labor Day. Ms. Boyd worked 28 hours the week that ended September 12, 2020. The school work pays \$16.68 an hour.

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. 871-24.22(2) provides:

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.

(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.

Iowa Admin. Code r. 871-24.23(23) and (25) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(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.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was at all relevant times physically and mentally able to work.

During the week that ended June 20, 2020, the claimant was working full-time. Based on the full-time employment, the claimant was otherwise removed from the labor market and did not meet the "availability" requirement for that week. In addition, due to the full-time employment, the claimant cannot be deemed totally, temporarily or partially unemployed that week. The claimant is not eligible for benefits for the week that ended June 20, 2020.

During the week that ended June 27, 2020, the claimant was on vacation, voluntarily unemployed, and not available for work. The claimant was not totally, temporarily or partially unemployed during that week. The claimant is not eligible for benefits for that week.

During the weeks between June 28, 2020 and August 8, 2020, the claimant was available for work, but was partially unemployed. During those weeks, the employer only had on-call and pick-up work available. Ms. Boyd made herself available for work. Her wages for those weeks did not exceed her weekly benefit amount plus \$15.00. Ms. Boyd is eligible for benefits for the weeks between June 28, 2020 and August 8, 2020, provided she is otherwise eligible.

During the weeks that ended August 15 and August 22, 2020, the claimant was available for full-time work, but was temporarily laid off. Ms. Boyd is eligible for benefits for those weeks, provided she meets all other eligibility requirements.

During the weeks that ended August 29, September 5, and September 12, 2020, Ms. Boyd was available for full-time work, but was partially unemployed. During each of those weeks,

Ms. Boyd was available for full-time work, but only part-time hours were available. Ms. Boyd's weekly wages did not exceed her weekly benefit amount plus \$15.00.

The employer's account may be charged for benefits for the weeks wherein the claimant was available for work, temporarily or partially unemployed.

DECISION:

The August 25, 2020, reference 02, decision is modified in favor of the claimant as follows:

During the week that ended June 20, 2020, the claimant did not meet the availability requirement, was not totally, temporarily or partially unemployed, and was not eligible for benefits.

During the week that ended June 27, 2020, the claimant was not available for work, was not totally, temporarily or partially unemployed during that week, and was not eligible for benefits.

During the weeks between June 28, 2020 and August 8, 2020, the claimant was available for work, but was partially unemployed. The claimant is eligible for benefits for the weeks between June 28, 2020 and August 8, 2020, provided she is otherwise eligible.

During the weeks that ended August 15 and August 22, 2020, the claimant was available for work, was temporarily laid off, and was eligible for benefits, provided she met all other eligibility requirements.

During the weeks that ended August 29, September 5, and September 12, 2020, the claimant was available for full-time work, was partially unemployed, and was eligible for benefits, provided she meets all other eligibility requirements.

The employer's account may be charged for benefits for the weeks wherein the claimant was available for work, temporarily or partially unemployed.



James E. Timberland
Administrative Law Judge

November 30, 2020
Decision Dated and Mailed

jet/scn