

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUNTEZ D BRUCE

Claimant

APPEAL NO. 18R-UI-04455-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERSONNEL STAFFING GROUP LLC

Employer

OC: 01/14/18

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available

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

STATEMENT OF THE CASE:

Personnel Staffing Group, LLC (employer) appealed a representative's February 6, 2018, decision (reference 01) that concluded Shauntez Bruce (claimant) was discharged and there was no evidence of willful or deliberate misconduct. This administrative law judge issued a decision on March 15, 2018, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on April 12, 2018. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 4, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Emily Halpin, Managing Account Executive, and participated by Stacy Navarro, Human Resources Coordinator for DES Employment Group, and Ashley O'Leary, Operations Manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work and whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant was assigned to perform full-time work as a general laborer at Foundation Building Material from September 4, 2017, through the present. The claimant filed for unemployment insurance benefits with an effective date of January 14, 2018, because his hours were reduced. For the week ending January 20, 2018, he work twenty-six hours rather than forty hours. The claimant has never filed a weekly claim and has received no unemployment insurance benefits after January 14, 2018. His weekly benefit amount is \$119.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed for the week ending January 20, 2018.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). During the week ending January 20, 2018, the claimant worked fewer hours than his regular full-time week. The claimant must also report to the department his earnings for the week in which he wishes to claim benefits. The claimant did not file a weekly report for the week ending January 20, 2018, reflecting the wages earned for the twenty-six hours he worked. The claimant has not met his burden of proof to show he was partially unemployed or that he was able and available for work. Benefits are denied.

DECISION:

The representative's February 6, 2018, decision (reference 01) is reversed. The claimant has not met his burden of proof to show he was partially unemployed or that he was able and available for work. Benefits are denied as of January 14, 2018.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn