

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY MUSCH
Claimant

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

APPEAL 21A-UI-19180-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: January 10, 2021
Claimant: Respondent (2)

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Employer filed an appeal from the August 20, 2021 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 21, 2021. Claimant did not participate. Employer participated through John O’Fallon, Hearing Representative, and Cassie Null, Area Operations Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer’s account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Diversified Services for Industry on July 5, 2018. Claimant worked as a General Cleaner.

Claimant last performed work for employer on June 12, 2021. On or about June 13, 2021, claimant tested positive for Covid-19. A physician advised claimant not to return to work from June 13, 2021 until June 28, 2021. On June 28, 2021, claimant notified employer that she was able and available to return to work. Employer told claimant that she must provide a release from her physician in order to return to work. Employer requested the release from claimant several times in July 2021. Claimant did not provide employer with a physician’s release.

On August 20, 2021, an unemployment insurance decision (reference 02) was issued determining that claimant was on a short-term layoff and eligible for benefits effective June 13, 2021. Employer had continuing work available for claimant since June 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-24.23(1), (6) and (35) provide:

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.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to 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.

Since June 13, 2021, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant was ill and had a medical report on file from a physician stating that she was not able to work. Claimant has not met her burden of proving that she has been released to return to work. Claimant has not established that she is able to and available for work. Accordingly, benefits are denied.

DECISION:

The August 20, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was totally unemployed and not able to and available for work. Benefits are denied effective June 13, 2021.



Adrienne C. Williamson
Administrative Law Judge
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November 5, 2021
Decision Dated and Mailed

acw/kmj