

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OLIVER L HURTUBISE
Claimant

GILCHRIST/JEWETT LUMBER COMPANY
Employer

APPEAL 20A-UI-11333-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On September 15, 2020, Oliver Hurtubise (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 11, 2020 (reference 01) that denied benefits as of March 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and so was not partially unemployed.

A telephone hearing was held on November 5, 2020. The parties were properly notified of the hearing. Claimant participated personally and was represented by non-attorney representative Mona Khowassah. Gilchrist/Jewett Lumber Company (employer/respondent) participated by HR Payroll Jerri Stoffel. Operations Manager Joby Campbell participated as a witness for employer.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. 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 began working for employer on June 19, 2018. Claimant was initially employed part-time as a driver, working up to 29 hours per week. Claimant is still employed by employer as a part-time, casual employee. Claimant last performed work for employer on March 11, 2020.

On or about March 11, 2020, claimant informed employer that he intended to start his own business. Employer told claimant that he could stay on board as a part-time, casual employee if he wished to. That way, if claimant's self-employment was slow, he could contact employer and see if any work was available. Claimant agreed to this arrangement. There was continuing work available for claimant. However, neither claimant nor employer contracted the other since that date about the availability of work.

Claimant's self-employment slowed down due to the pandemic. However, claimant did not reach out to employer to request work. Claimant did not provide a reason for why he did not contact employer. Claimant recently started doing some seasonal work for a farmer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated September 11, 2020 (reference 01) that denied benefits as of March 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and so was not partially unemployed is **AFFIRMED**.

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 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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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.

Claimant is not totally, partially, or temporarily unemployed. He is still in the employment of employer in the same way as agreed to by the parties when claimant decided to pursue self-employment in March 2020. That is, claimant could request work from employer and there would likely be work available for him if he did so. Claimant has chosen not to request work from employer but instead to pursue self-employment and seasonal work. Claimant is of course free to pursue whatever work he wishes to. However, so long as claimant remains employed by employer in the same way as the parties agreed, he cannot be considered unemployed under applicable law. Employer's account is not subject to charge.

DECISION:

The decision dated September 11, 2020 (reference 01) that denied benefits as of March 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and so was not partially unemployed is AFFIRMED. Claimant is not eligible for benefits as he is not unemployed as defined in applicable law.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 12, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.