

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINIC LEMVAN
Claimant

BOYS CLUB OF DES MOINES
Employer

APPEAL 20A-UI-09585-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/26/20
Claimant: Appellant(4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant/appellant, Dominic Lemvan, filed an appeal from the August 10, 2020 (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 September 25, 2020. The claimant participated. The employer, Boys Club of Des Moines, participated through Greg Grant. Devan Jeffries attended as an observer.

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:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to work and available for work effective April 26, 2020?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment on May 22, 2018 and remains employed as a part-time youth development professional. At the time of hire, claimant was not guaranteed a set number of hours each week. Claimant agreed to the arrangement.

Claimant established a claim for benefits with an effective date of April 26, 2020. His weekly benefit amount is \$149.00. Claimant filed his claim because hours were reduced by the employer. The claimant did not perform work for the period of May 2, 2020 through June 13, 2020 but was paid wages through the Paycheck Protection Program (PPP). Claimant has worked all available hours.

Claimant's wages reported on his weekly continued claims do not match wages reported by the employer. Employer reported the following hours and wages for the claimant in conjunction with his weekly continued claims:

DATE	HOURS WORKED	WAGES
05/02/20	0	\$100 PPP
05/09/20	0	\$200 PPP
05/16/20	0	\$200 PPP
05/23/20	0	\$100 PPP
05/30/20	0	\$100 PPP
06/13/20	0	\$100 PPP
06/20/20	0	\$0
06/27/20	0	\$0
07/04/20	1	\$10
07/11/20	24	\$240
07/18/20	24	\$240
07/25/20	28.75	\$287.50
08/01/20	32.75	\$327.50
08/08/20	23.25	\$232.50

REASONING AND CONCLUSIONS OF LAW:

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".

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.

For the weeks ending June 20, 2020 and June 27, 2020, claimant was totally unemployed. He performed no work and received no wages or compensation. He was able to and available for work. Benefits are allowed for this two week period only, provided he is otherwise eligible. The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

For all other weeks, claimant does not meet the requirements of being partially unemployed. When an individual agrees to work part-time, the implied agreement is that a set number of hours will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when he was hired, he is not considered partially unemployed. Benefits are denied.

The issue of the claimant's unrecorded and inaccurate wages is remanded to the Benefits Bureau for an adjustment.

Note to Claimant. This decision denies benefits for all weeks except the weeks ending June 20 and 27, 2020. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* 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 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The unemployment insurance decision dated August 10, 2020, (reference 01) is modified in favor of the claimant.

The claimant was totally unemployed for the two-week period of June 14-27, 2020. Benefits are allowed for this period, provided he is otherwise eligible. For all other weeks, the claimant does not meet the definition of unemployed. Benefits are denied.

REMAND: The following issues are remanded:

- The issue of the claimant's unrecorded and inaccurate wages is remanded to the Benefits Bureau for an adjustment.
- The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.



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

September 28, 2020
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. 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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information