

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAGEN M MILLER
Claimant

CLEARY BUILDING CORP
Employer

APPEAL 23A-UI-11975-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/29/23
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

On December 20, 2023, employer Cleary Building Corp. filed an appeal from the December 12, 2023 (reference 03) unemployment insurance decision that allowed benefits effective November 26, 2023, determining claimant was employed part-time and available for his regular hours. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on December 29, 2023. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 8:00 a.m. on Thursday, January 11, 2024. Claimant Kagen M. Miller participated. Employer Cleary Building Corp. participated through Kelly Shoppa, HR Coordinator. No exhibits were offered for the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant totally, partially, or temporarily unemployed for the week ending December 2, 2023?

Was the claimant able to and available for work for the week ending December 2, 2023?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on June 12, 2023. He works full-time hours as a construction laborer. Claimant opened his claim for benefits with an effective date of October 29, 2023, because he anticipated working reduced hours that week.

Claimant has filed two continued claims for benefits during his claim year. He filed a claim for the week ending December 2, 2023, reporting that he worked and earned \$328.00 in gross wages. Claimant received partial unemployment benefits in the amount of \$399.00 that week. He then filed a claim for the week ending December 9, 2023, reporting that he worked and earned \$999.00 or more in gross wages. Claimant received no unemployment benefits that week.

Claimant worked 8.75 hours on Monday, November 27; and 4 hours on Tuesday, November 28. He reached out to branch manager Jason the morning of Wednesday, November 29, to inquire

about available work for the remainder of the week. He initially told Jason that he had an offer to work "under the table" for someone else on Thursday and Friday if the employer had no work available for him. Later that day, when he had not heard from Jason, claimant sent another message stating, "If any work comes up, I would still like to work. I was too late to work and they found other people to work the [under the table] job." On Thursday morning, Jason replied, "10-4. Nothing until Monday."

Claimant had injured himself with a nail gun the week prior to the week he filed for benefits, but he was physically able to work immediately after the injury. He could carry buckets of cement and perform all of his regular job duties. Claimant was available for work the week of November 26 through December 2, 2023. He was ready to return to his regular, full-time employment if the employer called him and told him to come back.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed during the week ending December 2, 2023.

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 96.1A, subsection 37", paragraph "b", subparagraph (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 § 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 Admin. Code r. 871-24.23(16) and (17) state:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

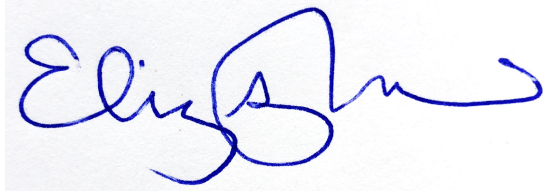
(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.1A(37)). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* Claimant Kagen Miller performed services and received wages during both weeks that he filed for benefits. He was not totally unemployed either week.

To qualify for partial unemployment benefits, an individual must be separated from full-time employment and working odd jobs or working less than his or her regular full-time work week. *Id.* If an individual is employed in a full-time position and is voluntarily limiting his availability for work, because he is not willing to work during the hours when work is available or because he is not willing to work the required hours, that individual will not qualify for partial unemployment. Iowa Admin. Code r. 871-24.23(16) and (17). Claimant Kagen Miller is employed in a full-time position. He worked full-time hours until the week of November 26, 2023, when the employer limited his hours. The reason his hours were limited remains unclear, but what is established by the record is that the employer – and not claimant – limited claimant's work hours. was hired into and requested a part-time position. Claimant's first message to Jason on Wednesday, November 29 indicated he would only take the side job if the employer had no work for him, and his follow-up message later that day established the side job was no longer an option at all. The claimant was partially unemployed – working less than his regular full-time week and earning less than his weekly benefit amount plus fifteen dollars – for the week ending December 2, 2023. Benefits are allowed.

DECISION:

The December 12, 2023 (reference 03) unemployment insurance decision is affirmed. Claimant is eligible for benefits effective November 26, 2023, because he was able to and available for work and was partially unemployed for that week. Benefits are allowed, provided he was otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

January 16, 2024
Decision Dated and Mailed

LJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.