

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAYMOND B ACKERMAN
Claimant

TRINITY LUTHERAN SCHOOL
Employer

APPEAL NO. 21A-UI-22631-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/21
Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Raymond Ackerman III, filed a timely appeal from the October 6, 2021, reference 01, decision that denied benefits effective February 21, 2021, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on December 6, 2021. Claimant participated personally and was represented by his father, Raymond Ackerman, Jr. Michelle Warner, Director—Ministry Support, represented the employer. The parties waived formal notice on the able and available issues in the present appeal number. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-22632-JTT. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, WAGE-A and the reference 01, 02 and 03 decisions.

ISSUES:

Whether the claimant was able to work and available for work within the meaning of the law beginning February 21, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning February 21, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim and second benefit year that was effective February 21, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$180.00. The claimant made weekly claims for each of the weeks between February 21, 2021 and June 12, 2021. The claimant reported wages for each of the benefit weeks except the week that ended March 21, 2021. The wages reported by the claimant were less than the \$180.00 weekly benefit amount plus \$15.00. The claimant did not seek insured employment during the period of February 21, 2021 to June 12, 2021.

The claimant most recently performed insured work on February 21, 2020. That work was performed for employer Life Connections Peer Recovery Services. Iowa Workforce Development determined the claimant separated from that employment for no disqualifying

reason. See the June 30, 2020 (reference 03) decision entered in connection with the February 23, 2020 original claim.

On August 24, 2020, the claimant began uninsured work with Trinity Lutheran School, a parochial school, as a part-time After School Associate. The Trinity workplace is located on a church campus in Davenport. The claimant's wage during the relevant period of February 21, 2021 through June 12, 2021 was \$8.00 an hour. Trinity Lutheran School did not decrease the wage and did not decrease the amount of work it had for the claimant, except during spring break, the week that ended March 20, 2021. Trinity Lutheran School did not have work for the claimant during spring break week. During the period of February 21, 2021 through June 12, 2021, the claimant performed all of the work Trinity Lutheran School had for the claimant.

Trinity Lutheran School does not have an employer account with Iowa Workforce Development. Trinity Lutheran School did not make quarterly reports to Iowa Workforce Development concerning the work performed by the claimant. The claimant's work for Trinity Lutheran School was not "insured work" for unemployment purposes.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Code section 96.19(18)(a)(6) provides, in relevant part, as follows:

As used in this chapter, unless the context clearly requires otherwise:

(18) "Employment".

(a) Except as otherwise provided in this subsection, "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C. § 3301-3309, solely by reason of section 3306(c)(8) of that Act.

(6) For the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of that ministry or by a member of a religious order in the exercise of duties required by such order.

The claimant was not available for insured work within the meaning of the law during the period of February 21, 2021 through June 12, 2021. During that period, the claimant eschewed a search for insured work and elected instead to perform uninsured work with Trinity Lutheran School. The claimant is not eligible for benefits for the period of February 21, 2021 through June 12, 2021. Because the claimant was not available for work within the meaning of the law, and because the Trinity Lutheran School work was not insured work, the partial unemployment issue is moot and need not be further considered.

DECISION:

The October 6, 2021, reference 01, decision is modified as follows. The claimant was not available for insured work within the meaning of the law during the period of February 21, 2021 through June 12, 2021 and, therefore, is not eligible for benefits for that period.



James E. Timberland
Administrative Law Judge

January 14, 2022
Decision Dated and Mailed

jet/mh

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. Individuals who do not qualify for regular unemployment insurance benefits, but who are 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>.