

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAIGE A ALSTON

Claimant

APPEAL NO. 22A-UI-03544-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 12/26/21

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporarily Unemployed

STATEMENT OF THE CASE:

On January 24, 2022, Paige Alston (claimant) filed a timely appeal from the January 28, 2022 (reference 03) decision that denied benefits effective January 02, 2022, based on the deputy's conclusion that the claimant was still employed same hours and wages as in the original contract of hire and, therefore, could not be deemed partially unemployed. After due notice was issued, a hearing was held on March 11, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the three weeks between December 26, 2021 and January 15, 2022.

Whether the claimant was partially and/or temporarily unemployed during the three weeks between December 26, 2021 and January 15, 2022.

Whether this employer's account may be charged for benefits for the three weeks between December 26, 2021 and January 15, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Manpower International, Inc. a temporary employment firm. Since February 2021, the claimant has been in a full-time assignment at a John Deere facility. The claimant's duties involve making rounds to sanitize areas of the workplace to hinder the spread of COVID-19. The claimant generally works a Monday through Friday schedule. The claimant generally started work at 7:00 a.m. and works to 3:30 or 4:00 p.m. The claimant is allowed flexibility in her work schedule. The assignment pays \$17.00 an hour. During the week of December 26, 2021 through January 1, 2022, the John Deere facility was on temporary shut-down. The claimant learned about the shutdown when she reported for work on Monday, December 27, 2021. On that day, Manpower authorized the claimant to do one round of

sanitizing, which took about an hour and for which the claimant earned \$17.00. Thereafter, Manpower did not have any additional work for the claimant until Monday, January 3, 2022, when the John Deere facility re-commenced operations. At that time, the claimant returned to regular duties and regular full-time work schedule.

The claimant established an original claim for benefits that was effective December 26, 2021. Iowa Workforce Development set the weekly benefit amount at \$283.00. Manpower International, Inc. is the most recent base period employer. The claimant made timely weekly claims for the weeks that ended January 1, January 8 and January 15, 2022. On January 5, 2022, the claimant spoke directly with an IWD representative to make her weekly claim for the week that ended January 1, 2022 and reported \$17.00 in wages for that week. The claimant used the regular reporting system to report for the weeks ending January 8 and January 15, 2022 and reported \$563.00 and \$414.00 for those weeks. The claimant then discontinued her claim.

During the week that started January 2, 2022, that claimant became confused about the reporting requirement and ended up "reactivating" her claim effective January 2, 2022. The reactivation may have caused the IWD computer system to ignore the timely claim for the week that ended January 1, 2022.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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).

During the week that ended January 1, 2022, the claimant was able to work, available for work, but temporarily laid-off during to the plant shutdown. The claimant is eligible for benefits for the week that ended January 1, 2022, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the week that ended January 1, 2022.

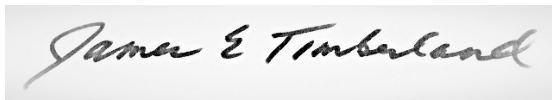
During the weeks between January 2, 2022 and January 15, 2022, the claimant was working her full-time hours and earned wages that exceeded her weekly benefit amount by more than \$15.00. The claimant did not meet the unemployment insurance "availability" requirement and was neither temporarily nor partially unemployed during those two weeks. The claimant is not eligible for benefits for the two weeks between January 2, 2022 and January 15, 2022.

DECISION:

The January 28, 2022 (reference 03) decision is MODIFIED in favor of the claimant/appellant as follows.

During the week that ended January 1, 2022, the claimant was able to work, available for work, but temporarily laid-off. The claimant is eligible for benefits for the week that ended January 1, 2022, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the week that ended January 1, 2022.

During the weeks between January 2, 2022 and January 15, 2022, the claimant did not meet the unemployment insurance "availability" requirement and was neither temporarily nor partially unemployed. The claimant is not eligible for benefits for the two weeks between January 2, 2022 and January 15, 2022.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

March 25, 2022
Decision Dated and Mailed

jet/scn