

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVYN R BELSETH
Claimant

BWW RESOURCES LLC
Employer

APPEAL 21A-UI-23048-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

On October 15, 2021, the claimant/appellant filed an appeal from the October 11, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant being employed for the same hours and wages as original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2021. The hearing was held together with appeal 21A-UI-23285-CS-T and combined into one record. Claimant participated at the hearing. Employer did not call in to participate during the telephone hearing. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work?
Does the claimant meet the definition of being considered partially unemployed?
Does the claimant meet the definition of being considered totally unemployed?
Does the claimant meet the definition of being temporarily unemployed?
Is claimant employed for 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 October 29, 2020. Claimant was hired as a part-time server. Claimant was told that he would work 24-30 hours a week. Claimant was paid \$4.35 an hour. Claimant began experiencing health problems. Claimant worked on July 6, 2021, but was sent home because he was having medical problems. On July 8, 2021, claimant went back to work and worked until Saturday, July 10, 2021. Claimant again began experiencing health issues and left early on July 10, 2021. The claimant went to the Emergency Room on Sunday, July 11, 2021. The claimant took Monday, July 12, 2021, off from work because he was not feeling well. Claimant went back to work Tuesday, July 13, 2021, and left early because he was not feeling well. Claimant returned to work on July 16, 2021. Claimant worked his shifts the week of July 18, 2021, through July 26, 2021. The claimant was scheduled to have a procedure to correct his

health problems. Claimant took July 27, 2021, through July 31, 2021, to prepare for the procedure and to recover from the procedure. Claimant returned to work on August 1, 2021.

During the month of July claimant was working approximately 45 hours a week. The employer asked the claimant to work more hours because they were short staffed.

The claimant separated from the employer on August 16, 2021. The separation is addressed in appeal 21A-UI-23048-CS-T.

The claimant filed for benefits the weeks ending July 10, 2021, through July 31, 2021. The claimant then filed for benefits again after his separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not totally, partially or temporarily unemployed.

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:

Benefit 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 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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

(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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Claimant was hired for a part time position. Claimant's hours increased during the month of July. Claimant testified the employer asked claimant to work more hours because they were short staffed. Any limitation of hours was triggered by claimant's inability to work due to his medical condition and was not due to the employer. All the days that claimant missed from work were due to his illness. The claimant has since had a medical procedure and is recovered. Since the claimant's illness disqualifies him from benefits the claimant is denied benefits from July 4, 2021, through July 31, 2021. Claimant is able to work and available for work effective August 1, 2021, when he returned to work.

Since the claimant is not entitled to benefits the issue of whether the employer should be charged is moot.

DECISION:

The October 11, 2021, (reference 02) unemployment insurance decision is affirmed. From July 4, 2021, through July 31, 2021, claimant was not totally, partially, or temporarily unemployed. Benefits are denied.

Claimant is able to work and available for work effective August 1, 2021.

The issue of whether the employer should be charged is moot.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 13, 2022
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.