

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NASHAWN A JALLAH**  
Claimant

**IOWA STAFFING INC**  
Employer

**APPEAL 20A-UI-01003-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/05/20**  
**Claimant: Respondent (4)**

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.5(3)A – Work Refusal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the January 30, 2020 (reference 02) unemployment insurance decision that found claimant was eligible to receive benefits beginning January 5, 2020. The parties were properly notified of the hearing. A telephone hearing was held on February 19, 2020, at 3:10 p.m. Claimant participated. Employer participated through Alejandra Rocha, Office Manager. Employer's Exhibits 1 – 8 were admitted. Official notice was taken of the administrative record. During the hearing, the parties waived 10 days' notice to determine whether claimant had refused an offer of suitable work.

**ISSUE:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether the claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.  
Whether claimant refused an offer of suitable work

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant did not work from January 5, 2020 through January 11, 2020. On January 13, 2020, claimant began an assignment through Iowa Staffing, Inc., a temporary employment firm, as a full-time warehouse worker at Windsor Windows and Doors. Claimant worked January 13, 2020 through January 17, 2020. Claimant worked Monday through Friday from 10:00 a.m. until 7:00 p.m. Claimant earned \$16.50 per hour. Claimant was absent from work on January 20, 2020 due to illness and notified employer prior to the beginning of his shift. On January 21, 2020, employer notified claimant that his assignment was terminated due to attendance. On January 21, 2020, claimant requested a new assignment from employer. Claimant received no offers of work from employer since his assignment at Windsor Windows and Doors. On January 27, 2020,

employer terminated claimant. However, claimant is eligible for rehire and assignment with employer. Claimant filed an original claim for unemployment insurance benefits effective January 5, 2020. Claimant's weekly benefit amount is \$500.00.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed from January 5, 2020 through January 11, 2020, was not unemployed from January 12, 2020 through January 18, 2020, and was totally unemployed effective January 19, 2020. Benefits are denied from January 12, 2020 through January 18, 2020. Benefits are allowed from January 5, 2020 through January 11, 2020 and effective January 19, 2020, provided claimant is otherwise eligible.

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. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

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) provides:

2. Contribution rates based on benefit experience.

a. (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.

From January 5, 2020 through January 11, 2020, claimant performed no work and earned no wages. Claimant was totally unemployed that week. From January 12, 2020 through January 18, 2020, claimant had gross earnings of \$660.00 (40 hours x \$16.50 per hour). Claimant worked a regular full-time week and earned more than his weekly benefit amount plus \$15.00. Claimant was not unemployed that week. Claimant has been totally unemployed since January 19, 2020. Claimant has not been temporarily unemployed since filing his original claim effective January 5, 2020. Therefore, benefits are denied from January 12, 2020 through

January 18, 2020 and are allowed from January 5, 2020 through January 11, 2020 and effective January 19, 2020, provided claimant is otherwise eligible.

The next issue to be determined is whether claimant refused a suitable offer of work. For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

A two-step analysis is used to determine whether a claimant has refused a suitable offer of work. First, the offer must be for suitable work. If suitability is established, then, claimant must have a good cause reason for refusal. See Iowa Admin. Code r. 871-24.24(3).

Claimant did not receive, and therefore could not refuse, an offer of work. Claimant did not refuse to accept a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The January 30, 2020 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed from January 5, 2020 through January 11, 2020, was not unemployed from January 12, 2020 through January 18, 2020, and was totally unemployed effective January 19, 2020. Claimant has not been temporarily unemployed since filing his original claim effective January 5, 2020. Claimant did not refuse an offer of suitable work. Benefits are denied from January 12, 2020 through January 18, 2020. Benefits are allowed from January 5, 2020 through January 11, 2020 and effective January 19, 2020, provided claimant is otherwise eligible.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/scn