

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**LONDON A DAVIS**

Claimant

**WORKSOURCE INC**

Employer

**APPEAL 20A-UI-01435-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/17/19**

**Claimant: Respondent (2)**

---

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Able and Available

871 IAC 24.23(26) – Same Hours and Wages

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Worksource (employer) appealed a representative's February 11, 2020, decision (reference 07) that concluded London Davis (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Blake Costello, Branch Manager, and Jessica Swift, Account Manager.

**ISSUE:**

The issue is whether the claimant was able and available for work for the week ending February 22, 2020.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a staffing agency. The claimant was hired on November 15, 2019, as a full-time temporary janitor assigned to work at Data Clean.

The claimant opened a claim for unemployment insurance benefits with an effective date of November 17, 2019, but did not file a weekly claim. The employer timely responded to the notice of claim on February 6, 2020. It certified that the claimant was on temporary lay-off from January 20, 2020, to January 30, 2020. The claimant's weekly benefit amount was \$160.00.

On December 22, 2019, the claimant reopened her claim but did not file a weekly claim. On February 16, 2020, the claimant filed an additional claim for benefits and filed a weekly claim. From February 17 to February 21, 2020, there was no work available for the claimant. She reported \$520.00 in wages for the week ending February 22, 2020. No unemployment insurance benefits were issued for that week.

## 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 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.

Here the employer did not have work available for the employer during the week ending February 22, 2020, but the claimant reported income during that week. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the hearing and provide evidence of availability for work during the benefit week ending February 22, 2020. Without proof of being able and available, the claimant is deemed to be ineligible for unemployment insurance benefits for the week ending February 22, 2020.

**DECISION:**

The representative's February 11, 2020, decision (reference 07) is reversed. The claimant was not able and available for work for the week ending February 22, 2020. Benefits are denied.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/scn