

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS, UI APPEALS BUREAU**

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**NICHOLAS A RATTRAY**  
Claimant

**AQUALAND PETS PLUS LLC**  
Employer

**APPEAL NO. 23A-UI-00892-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/01/23  
Claimant: Appellant (4R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

On January 27, 2023, Nicholas Rattray (claimant) filed a timely appeal from the January 25, 2023 (reference 01) decision that denied benefits effective January 1, 2023, based on the deputy's determination that the claimant was still employed by Aqualand Pets Plus, L.L.C. under the same hours and wages as in the original contract of hire and could not be considered partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 14, 2023. 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. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO, KCCO, WAGEA, the A Cut Above Lawncare & Landscape notice of claim/non-protest, and the administrative law judge decision in Appeal Number 22A-UI-03730-SN-T.

**ISSUES:**

Whether the claimant has been temporarily or partially unemployed during the period beginning January 1, 2023.

Whether the claimant has been able to work and available for work during the period beginning January 1, 2023.

Whether the employer account of Aqualand Pets Plus, L.L.C. may be charged for benefits for the period beginning January 1, 2023.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Nicholas Rattray (claimant) established an original claim for benefits that was effective January 1, 2023. Iowa Workforce Development set the weekly benefit amount at \$180.00. Iowa Workforce Development has the claimant coded as a group 3, job-attached claimant. As such, the Iowa Workforce Development weekly claim reporting system would not solicit weekly employer contact and reemployment activities information from the claimant. By the time of the

February 14, 2023 appeal hearing, the claimant had made weekly claims for the six consecutive weeks between January 1, 2023 and February 11, 2023.

The base period applicable to the January 1, 2023 original claim consists of the fourth quarter of 2021 through the third quarter of 2022. The claimant's base period wages were as follows:

EMPLOYER	ACCT-LOC	2021/4	2022/1	2022/2	2022/3
A CUT ABOVE LAWN CARE & LA	522536-000	727		3696	3649
AQUALAND PETS PLUS LLC	594702-000	224	616	465	444

In addition, both base period employer's reported more recent wages paid to the claimant during the fourth quarter of 2022. A Cut Above Lawn care & Landscape reported paying \$2,136.00 and Aqualand Pets Plus, L.L.C. reported paying \$610.00.

Aqualand is the claimant's secondary employer. The claimant's duties at Aqualand involve maintaining reptile feed and water. Aqualand has at all relevant times had 12 hours of work available for the claimant each week. The Aqualand work hours include six hours on Saturday and six hours on Sunday. The Aqualand employment pays \$7.25 an hour, which means the employment has at all relevant times offered the opportunity to earn \$87.00 a week. There has been no change in the part-time Aqualand employment. In other words, Aqualand has not reduced the claimant's hours or wages.

A Cut Above Lawn care & Landscape has been the claimant's primary employer for several years. The claimant's duties are to mow municipal lawns during the mowing season. The claimant asserts that during the mowing season, he works eight to 10 hours per day and averages 40 hours per week, weather permitting, but Iowa Workforce Development wage records do not support the latter assertion. The claimant's wage for the 2022 mowing season was \$16.00 an hour. During the third quarter of 2022, July 1 to September 30, when the mowing season was in full-swing, the claimant's \$3,649.27 quarterly wages divided by the \$16.00 hourly wage yield average weekly wages totaling \$280.71 and average weekly work hours totaling 17.54. The claimant's A Cut Above average weekly wages and hours were slightly higher: \$284.31 and 17.77 hours.

At the time the claimant established the January 1, 2023 original claim, the claimant had last performed work for A Cut Above on November 4, 2022. A Cut Above had laid off the claimant at the end of the 2022 mowing season. A Cut Above did not tell the claimant whether that employer would be recalling the claimant to the employment for the 2023 mowing season. The claimant's experience in past years, is that the employer recalls the claimant to the employment as summer approaches. At the time the claimant established the January 1, 2023 original claim, the claimant had been laid off from the A Cut Above employment for eight weeks. At the time of the appeal hearing, there was snow on the ground, and A Cut Above had not yet contacted the claimant to recall him to the employment.

On January 4, 2023, Iowa Workforce Development mailed a notice of claim to A Cut Above Lawn care & Landscape. That employer responded that it was not protesting the claim for unemployment insurance benefits connected to the January 1, 2023 original claim.

According to the claimant's weekly claims and the claimant's testimony, the claimant has not consistently made himself available for the work hours Aqualand has for him. The claimant reported \$43.00 in wages for the week ending January 7, 2023, which, in light of the New Year's Day holiday, would indicate he made himself available for the work Aqualand had for him that week. For the week that ended, January 14, 2023, the claimant reported only \$38.00 in wages

from Aqualand, which would indicate the claimant was not available for the majority of the work Aqualand had for him that week. The claimant advises that he elected not to work at Aqualand during the week that ended January 21, 2023. For the week that ended January 28, 2023, the claimant again only reported \$38.00 in wages from Aqualand, which would indicate the claimant did not make himself available for the majority of the work Aqualand had for him that week. For the week that ended February 4, 2023, the claimant reported \$68.00 in wages from Aqualand, which would indicate the claimant made himself available for most but not all of the work Aqualand had for him that week. For the week that ended February 11, 2023, the claimant reported \$100.00 in wages from Aqualand, which would indicate the claimant made himself available for all of the work Aqualand had for him that week.

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

Iowa Code section 96.4(3)(a) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 provides, in relevant part, as follows:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

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

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.*

[Emphasis added]

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).

The claimant has not been partially unemployed from the secondary employer, Aqualand, at any time since the claimant established the January 1, 2023 original claim. That employer has continued to have the same hours and wages available to the claimant. Accordingly, that

employer's account will not be charged for benefits paid for the period beginning January 1, 2023 so long as the employer continues to offer the same employment.

The claimant was laid off from A Cut Above effective November 4, 2022. Contrary to the claimant's assertions, the A Cut Above employment has been part-time, not been full-time. In addition, by the time the claimant established the January 1, 2023 original claim, the period of the layoff had well exceeded four weeks. Accordingly, as of the January 1, 2023 original claim date, the claimant could not be considered temporarily unemployed from the A Cut Above employment and would be subject to the work search requirements set forth at Iowa Code section 96.4(3). However, in light of the fact that IWD has the claimant coded as a group 3 claimant, the claimant's failure to engage in an active and earnest search for new employment up to this point should not be counted against the claimant. The claimant must hereafter engage in an active and earnest search for new employment to replace the A Cut Above employment and must engage in four reemployment activities each week, including at least three job applications, and must comply with the associated reporting requirements. This matter will be remanded to the Benefits Bureau for a change of the group code to group 6, work search required.

The evidence indicates the claimant was at all relevant times able to work.

The evidence indicates the claimant was available for work with Aqualand within the meaning of the law during the weeks that ended January 7, February 4, and February 11, 2023, but not during the weeks that ended January 14, January 21, and January 28, 2023. The claimant is eligible for benefits for the weeks that ended January 7, February 4, and February 11, 2023, provided he was otherwise eligible. The claimant is not eligible for benefits for the weeks that ended January 14, January 21, and January 28, 2023.

#### **DECISION:**

The January 25, 2023 (reference 01) decision is MODIFIED in favor of the claimant as follows. The claimant has not been partially unemployed from the secondary employer, Aqualand, at any time since the claimant established the January 1, 2023 original claim. Accordingly, that employer's account will not be charged for benefits paid for the period beginning January 1, 2023 so long as the employer continues to offer the same employment. The claimant's continuance in the secondary employment under the same wages and hours would not, in light of the layoff from the primary employment, prevent the claimant from being considered for unemployment insurance benefits.

The claimant has not been *temporarily* unemployed A Cut of Above Lawn and Landscaping since he established the original claim that was effective January 1, 2023. The claimant is subject to the work search requirements set forth at Iowa Code section 96.4(3). However, in light of the fact that IWD has the claimant coded as a group 3 claimant, the claimant's failure to engage in an active and earnest search for new employment up to this point should not be counted against the claimant. The claimant must hereafter engage in an active and earnest search for new employment to replace the A Cut Above employment and must engage in four reemployment activities each week, including at least three job applications, and must comply with the associated reporting requirements.

The claimant was available for work with Aqualand within the meaning of the law during the weeks that ended January 7, February 4, and February 11, 2023, but not during the weeks that ended January 14, January 21, and January 28, 2023. The claimant is eligible for benefits for the weeks that ended January 7, February 4, and February 11, 2023, provided he was

otherwise eligible. The claimant is not eligible for benefits for the weeks that ended January 14, January 21, and January 28, 2023.

**REMAND:**

This matter is REMANDED to the IWD Benefits Bureau for a change of the group code to group 6, work search required. This matter is further REMANDED to the Benefits Bureau for consideration of whether the claimant has been available for work during the period beginning February 12, 2023.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

February 23, 2023  
Decision Dated and Mailed

jet/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.