

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSICA CLARK
Claimant

RESOURCES FOR HUMAN DEVELOPMENT
Employer

APPEAL 21A-UI-08862-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/31/21
Claimant: Appellant (1R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2021, (reference 01) unemployment insurance decision that denied benefits based on her still receiving the same hours and wages as in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2021. Claimant participated and testified. Employer participated through Hearing Representative Anna Marie Gonzalez, Manager Jan Tarantino, and Program Director Cara Kelley. The employer was represented by Senior Corporate Counsel Brian Joell. The administrative law judge took official notice of the agency records.

ISSUE:

Is the claimant partially or totally unemployed?
Is claimant able to and available for work effective January 31, 2021?

FINDINGS OF FACT:

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

The claimant, Jessica Clark, most recently began working as a full-time fiscal administrator, for employer, Resources for Human Development, on February 17, 2017. The claimant's rate of pay was \$17.00. She worked a full-time variable schedule. Claimant last worked as on February 3, 2021 because she was separated from employment on that date.

The claimant made an effective claim for benefits on January 31, 2021. The claimant's weekly benefit amount was \$529.00. During the hearing, the claimant stated she accidentally filed a week too early and clarified she was filing due to her separation from employment on February 3, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available effective January 31, 2021 because she was receiving the same hours and wages as in her original contract of hire.

Iowa Code § 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 § 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 Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23 (26) provides, in relevant part:

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

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

The claimant testified there was not a reduction in her hours or wages for the week ending January 31, 2021. As a result, the claimant is ineligible to receive benefits for that week under Iowa Admin. Code r. 871-24.23 (26). Both parties acknowledge the claimant's employment was separated on February 3, 2021. Separation was not listed on the hearing notice.

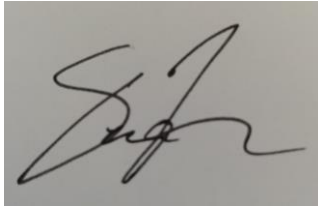
The issue of whether the claimant's separation qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

DECISION:

The March 25, 2021, reference 01, unemployment insurance decision is affirmed. The claimant was not able and available for work for the week ending January 31, 2021. Benefits are denied.

REMANDS:

The issue of whether the claimant's separation from employment on February 3, 2021 qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.



Sean M. Nelson
Administrative Law Judge
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June 30, 2021
Decision Dated and Mailed

smn/lj