

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MIKE EARLES

Claimant

KELLY SERVICES USA LLC

Employer

APPEAL NO. 21A-UI-14079-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21

Claimant: Appellant (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 11, 2021, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 16, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was admitted into evidence

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Kelly Services as a full time employee placed with ACT Services when work is available. When work is not available, claimant is laid off. Claimant also has other wages in the base period history. Claimant filed for unemployment benefits when laid off. Claimant was working full time hours into March of this year, then he was laid off. He was called back to work while there was work available, then laid off again later in the year.

Claimant remained able and available for work at all times when laid off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was temporarily unemployed at various points during the year.

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.

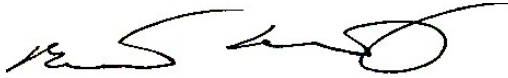
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

Because the claimant was working full time hours for his placement with ACT, and then laid off claimant is considered temporarily unemployed during those periods of shut downs as he remained able and available for work at all times. Benefits are allowed.

DECISION:

The June 11, 2021, reference 02, decision is reversed. The claimant is seen as temporarily unemployed for those periods after March 21, 2021 when he filed for benefits, and benefits are allowed, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

August 19, 2021
Decision Dated and Mailed

bab/kmj