

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID A HIEB**  
Claimant

**APPEAL 21A-UI-04774-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWES HOME CENTERS LLC**  
Employer

**OC: 11/01/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code §96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

David A Hieb., the employer/appellant, filed an appeal from the January 27, 2021, (reference 01) unemployment insurance decision that denied. The parties were properly notified about the hearing. A telephone hearing was held on April 13, 2021. Mr. Hieb participated and testified. Timothy Hieb, Mr. Hieb's father, also participated and testified. The employer did not register for the hearing and did not participate.

**ISSUES:**

Is Mr. Hieb able to and available for work?  
Is Mr. Hieb an on-call worker?  
Is Mr. Hieb still employed at the same hours and wages?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Hieb began working for the employer in April 2020. He worked as a full-time cashier.

On October 5, 2020, Mr. Hieb was arrested on his lunch break on outstanding warrants. Mr. Hieb called his father and asked him to let the employer know that he would not be at work the rest of the day. Mr. Hieb's father informed the employer. The employer asked Mr. Hieb's father for information about Mr. Hieb's criminal case. Mr. Hieb's father, with Mr. Hieb's permission, gave the employer the information.

Mr. Hieb was released from incarceration on October 6 and contacted the employer. The employer told Mr. Hieb that he could not return to work until October 8. Mr. Hieb worked on October 8. He took off on October 9 and worked one-half day on October 10. At the end of his shift on October 10, the employer told Mr. Hieb that he would not be scheduled to work again

until the employer knew that his criminal case was resolved. The employer offered Mr. Hieb unpaid administrative leave, which Mr. Hieb refused.

About two weeks later, Mr. Hieb's father asked the store manager, who he knows, what was going on. The store manager told Mr. Hieb's father that the decision was not his but was a decision from higher ups.

Mr. Hieb was in the hospital from October 25 – November 3 for a non-work related injury. In late November, Mr. Hieb contacted the employer to ask about his job. Mr. Hieb asked if he could be put back on the schedule. The employer told Mr. Hieb that he would not be scheduled to work again until the employer knew that his criminal case was resolved.

The employer sent Mr. Hieb a letter dated December 17, 2020 telling him that since he is an active employee and has not worked in some time, he should contact Sedgwick about intermittent leave. The letter also told Mr. Hieb that if he does not work for the next three consecutive pay periods his employment will be terminated. Mr. Hieb did not contact Sedgwick. The employer sent Mr. Hieb another letter dated January 14, 2021 giving him the same information as was in the December 17 letter. Mr. Hieb did not call Sedgwick.

On February 8, Mr. Hieb a deferred judgment was issued in Mr. Hieb's criminal case on one heroin charge. Mr. Hieb did not tell the employer about the judgment because he assumed he had already been fired based on the December 17, 2020 and January 17, 2021 letter.

The issue of Mr. Hieb's separation from employment with this employer has not yet been investigated and determined by the Benefits Bureau of Iowa Workforce Development.

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

For the reasons that follow, the administrative law judge concludes that Mr. Hieb is able to available for work from November 4, 2020 through December 17, 2020.

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. 871-24.23(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 different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) 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.

In this case, the employer would not schedule Mr. Hieb to work but Mr. Hieb was able to and available for work on November 1, 2020, the effective date of his claim. Mr. Hieb stopped being available for work on December 17, 2020 when the employer asked Mr. Hieb to contact them

about his employment and he did not. Benefits are allowed from November 1, 2020 through December 17, 2020.

**DECISION:**

The January 27, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Hieb. Mr. Hieb is able to and available for work from November 1, 2020 through December 17, 2020. Benefits are allowed during this time period.

**REMAND:**

The issue of Mr. Hieb's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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April 19, 2021  
Decision Dated and Mailed

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