

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CORY A COLLINS
Claimant

APPEAL NO. 21A-UI-14913-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

**OC: 03/21/21
Claimant: Appellant (1R)**

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 21, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 25, 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 Harvey's, a base period employer, as a recently converted full time employee. At all times relevant, claimant worked as a part time dealer, although he often received full time hours.

Claimant applied for and received unemployment wages throughout the last three quarters of 2020 and the first quarter of 2021 although it appears claimant received wages through the last quarter of 2020 and the first quarter of 2021. Claimant did not report these wages in his weekly reports.

Claimant filed a second year claim on March 21, 2021. For the first two weeks after claimant filed a second year claim, he was out ill with Covid. After that period he went back to working his normal unspecified part time hours he'd been working. He continued working these hours until June when he started working as a full time employee.

Claimant does not appear to have filed any weekly reports since opening his second year claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work for the two week period following his opening of his original claim on March 21, 2021 as he was afflicted with Covid for that time period. Additionally, claimant was not able to show that he was partially unemployed for the period of time after he returned from his Covid illness.

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.

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.

Because the claimant was ill for the first two weeks after opening his 2021 original claim, he is not eligible for benefits during that time period. (Claimant may be eligible to receive PUA benefits during this period, but must separately apply for these benefits.) Claimant has not shown that he was partially unemployed after he returned to work as he was a part time employee that was not guaranteed specific hours. Benefits are denied.

In examining this matter, it appears claimant has not reported wages in his weekly reporting that appear for him over the fourth quarter of 2020 and first quarter of 2021. This matter will be remanded to the Benefits Bureau to determine whether claimant has correctly reported his wages for these quarters and whether the correct reporting of wages would allow him the benefits received.

DECISION:

The June 21, 2021, reference 01, decision is affirmed. The claimant was not eligible for benefits for the time period up to April 4 as he was not able and available for work as a result of Covid. Claimant is not partially unemployed after that period and benefits are denied as claimant continued to work his part time job without a defined work schedule.

This matter is remanded to the benefits bureau to examine claimant's 2020 claim year to determine whether claimant correctly reported his wages for the fourth quarter of 2021 and first quarter of 2021.



Blair A. Bennett
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

bab/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.