

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL CONGER
Claimant

APPEAL 22A-UI-07209-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/26/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available- Work Searches
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

On March 15, 2022, the claimant/appellant filed an appeal from the March 10, 2022, (reference 01) unemployment insurance decision that concluded the claimant was no longer temporarily unemployed and that he must engage in re-employment services including work searches. A telephone hearing was held on May 2, 2022. The claimant, Russell Conger, participated and testified. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to work and available for work?

Does the claimant meet the definition of being considered partially, totally, or temporarily?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits with an effective date of December 26, 2021. The claimant is employed by Agri-Land FS and has been attached to this employer for the past ten years. The claimant is laid off each winter and resumes work in early spring when the weather permits. Some years the claimant is laid off in the late summer until harvest begins in September or October. Claimant was most recently on a seasonal lay-off effective December 26, 2021, and returned to work on April 3, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is no longer temporarily unemployed and is not exempt from making the minimum of four employment contacts on a weekly basis.

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. 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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

Iowa Code section 96.1A (37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

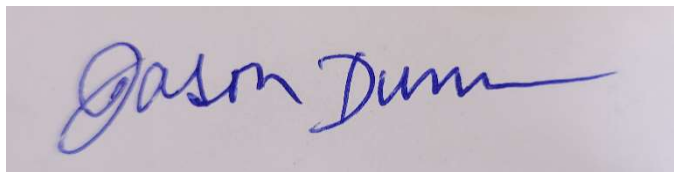
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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 Workforce Development has made the policy decision to exempt certain workers in the certain occupations from making weekly employment contacts. This exemption will ensure they are available to return to employment with their regular employer whenever called to return. The current occupations/trades that are exempt from the weekly work search requirements are: Highway Maintenance, Cement Masons & Concrete Finishers, Electricians, Painters, Plumbers, Pipefitters, & Steamfitters, Boilermakers, Carpenters, Sheet Metal Workers, and any employees of employers that have a public contract to work on public roads and highways including flaggers, drivers, and laborers. Although the claimant remains attached to his employer, Agri-Land FS, and was laid off due to lack of work due to the seasonal nature of the employment, and returned to work on April 3, 2022. The claimant's is not employed in an occupation that has been exempted from Re-Employment Services, by IWD and is therefore required to engage with the Re-employment requirements determined by the department. .

DECISION:

The March 10, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant is no longer temporarily unemployed and is not employed in an occupation that is exempt from engaging in Re-Employment requirements. The claimant is required to make the required employment contacts each week.



Jason Dunn
Administrative Law Judge
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May 17, 2022
Decision Dated and Mailed

jd/kmj