

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTHONY D FONTINEL**  
Claimant

**NCS PEARSON INC**  
Employer

**APPEAL 19A-UI-07790-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19  
Claimant: Appellant (2)**

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Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On October 4, 2019, Anthony D. Fontinel (claimant) filed an appeal from the October 1, 2019, reference 01, unemployment insurance decision that determined he was no longer temporarily unemployed from NCS Pearson, Inc. (employer) and was required to search for work to remain eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2019 and consolidated with the hearing for appeal 19A-UI-07791-SC-T. The claimant participated personally. The employer did not register a phone number for the hearing and did not participate. No exhibits were offered into the record.

**ISSUES:**

Was the claimant temporarily unemployed?  
Was the claimant required to search for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his original claim for benefits effective January 6, 2019, when he was laid off due to a lack of work. He was recalled after three weeks and returned to work. The claimant reactivated his claim for benefits effective September 15, 2019 when he was unemployed for the three-week period ending October 5, 2019 due to a lack of work. He returned to work on October 7, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed from September 15 through October 5, 2019 and was not required to search for work.

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". [Emphasis added.]

Iowa Code section 96.19(38)c provides:

Definitions.

38. Total and partial unemployment

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.

The claimant was laid off for three consecutive weeks during the period in question. He was considered temporarily laid off as his layoff did not exceed four consecutive weeks. Iowa Code section 96.19(38)c. As a result, the requirement that he be actively and earnestly seeking work during that timeframe is waived. Iowa Code section 96.4(3). The claimant was not required to look for work during his most recent layoff.

If the claimant has a layoff in the future that exceeds four consecutive weeks, he will be required to search for work after the fourth week.

**DECISION:**

The October 1, 2019, reference 01, unemployment insurance decision is reversed. The claimant was temporarily unemployed from September 15 through October 5, 2019 and was not required to search for work. If the claimant has a layoff in the future that exceeds four consecutive weeks, he will be required to search for work after the fourth week.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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