

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT T VERTZ
Claimant

APPEAL 22A-UI-06300-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/05/21
Claimant: Appellant (5R)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment

STATEMENT OF THE CASE:

On March 13, 2022, Robert Vertz (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 9, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits.

A telephone hearing was held on April 21, 2022. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant has worked for employer Roder Enterprises for ten years. Claimant remains employed there. Employer is an asphalt repair company. The work is seasonal in nature. Claimant is laid off each winter due to a lack of work and then returns to work in mid-to-late April each year. Claimant was laid off most recently around the end of November 2021. He expects to return to work around April 25, 2022, if weather permits.

Claimant opened an original claim for benefits with an effective date of December 5, 2021. He has filed weekly claims each week from the benefit week ending December 11, 2021 through the benefit week ending April 16, 2022. Claimant did not perform work for employer or earn wages in any of those weeks except the week ending March 12, 2022. He earned wages in the amount of \$200.00 in that week. There was no work available again after that week.

After receiving the decision claimant went to his local IWD office and was told he was exempt from the work search requirements due to the nature of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 9, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect.

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 96.1A(37) 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.

Claimant was initially unemployed due to a lack of work, beginning with the benefit week ending December 11, 2021. Claimant ceased to be temporarily unemployed and became totally unemployed after the benefit week ending January 1, 2022. This is because an individual cannot be temporarily unemployed for a period exceeding four consecutive weeks.

Claimant was then totally unemployed from the week ending January 8, 2022 through the benefit week ending March 5, 2022, as he performed no work during this period.

Claimant was partially unemployed in the week ending March 12, 2022, as he performed some work for employer and earned wages in an amount less than his weekly benefit amount plus \$15.00.

Claimant was then again unemployed due to a lack of work from the benefit week ending March 19, 2022. He was temporarily unemployed from the benefit week ending March 19, 2022 through the benefit week ending April 9, 2022. He ceased to be temporarily unemployed after those four consecutive weeks and again was totally unemployed effective with the benefit week ending April 16, 2022.

An individual who is temporarily unemployed or partially unemployed while still attached to their regular employer need not be able to work, available for work, and earnestly and actively seeking work during each week filed in order to be eligible for benefits in that week. However, an individual who is totally unemployed must meet those requirements in order to be eligible for benefits each week.

The administrative law judge notes that after receiving the decision claimant went to his local IWD office and was told he was exempt from the work search requirements due to the nature of his employment. While the administrative law judge does not doubt claimant received this advice and it appears IWD is granting such exemptions, the administrative law judge is not aware of any such exemption in applicable law. The administrative law judge must apply the law as it exists regardless of whether IWD is taking other actions.

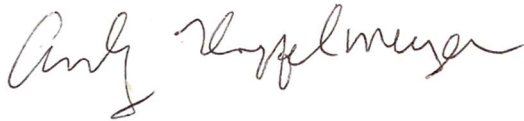
The administrative law judge does not find it appropriate to decide for the first time on appeal whether claimant was able to work, available for work, and earnestly and actively seeking work and thus eligible for benefits during the weeks he was not partially or temporarily unemployed. That matter is therefore remanded to the Benefits Bureau for a fact-finding investigation and determination.

DECISION:

The decision dated March 9, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect. It is modified to clarify whether claimant was totally, partially, or temporarily unemployed and thus must seek work in each week filed as set forth above.

REMAND:

This matter is remanded to the Benefits Bureau for fact-finding investigation and determination regarding whether claimant was eligible for benefits during the weeks he was not partially or temporarily unemployed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 25, 2022
Decision Dated and Mailed

abd/abd