

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERARD J GIBSON
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 21A-UI-08308-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Gerard J. Gibson, filed an appeal from the March 8, 2021 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2021. The claimant participated personally. Sabra Jackson, wife of claimant, also testified. The employer participated through Sarah C. Fiedler, risk manager.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant opened his claim for unemployment insurance benefits with an effective date of July 5, 2020 and an additional claim effective December 20, 2020. His weekly benefit amount (WBA) is \$331.00.

Claimant worked one assignment for this assignment, which began in July 2019 and ended January 12, 2021. Claimant was a CNC production operator, earning \$14.00 per hour. Claimant's assignment and history reflect he worked 40 hours per week. Due to COVID-19, the employer's client reduced hours for employees to a 32 hour work week. Employer asserted claimant was not guaranteed 40 hours per week.

For the week of December 20-26, 2020, claimant worked 32 hours and earned \$448.00.

For the week of December 27, 2020, through January 2, 2021, claimant worked 24 hours and earned \$336.00. (Claimant was not eligible for holiday pay).

For the week of January 3-9, 2021, claimant worked 32 hours and earned \$448.00.

For the week of January 10-16, 2021, claimant worked 16 hours and earned \$224.00 before separation ensued.

Claimant is currently listed as Group Code 8, which currently indicates that he is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges. On May 11, 2021, Governor Reynolds announced that effective June 13, 2021, Iowa will no longer waive employer charges for COVID-related unemployment insurance claims.ⁱ

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the decision in favor of the appellant.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 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 96.1A, subsection 38, paragraph "b", subparagraph (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 Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

Iowa Code § 96.7(2)a(2)a provides:

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.

(emphasis added).

Based on the evidence presented, the claimant's regular full-time work week was 40 hours, based upon his history with the assignment, which began in 2019. For any week that claimant earned more than his weekly benefit amount plus \$15, (\$331 + \$15 = \$346) he is not eligible for

benefits, even though his wages were less than forty hours per week. See Iowa Admin. Code r. 871-24.18.

In this case, the claimant earned wages in excess of his weekly-benefit amount, plus fifteen dollars for the weeks ending December 26, 2020 and January 9, 2021. Because the claimant has earned wages in excess of his weekly-benefit amount, plus fifteen dollars, he cannot be considered partially unemployed for those weeks. Iowa Code 96.19(38) and Iowa Admin. Code r. 871-24.18. Benefits are denied for the weeks ending December 26, 2020 and January 9, 2021.

For the weeks ending January 2, 2021 and January 16, 2021, the claimant was partially unemployed and eligible for benefits, based upon earnings. Benefits may be allowed based upon reporting of weekly earnings. Employer is not currently chargeable for benefits, as claimant is a Group Code 8, but may be liable for future benefit charges to its account.

The issues of claimant's permanent separation and whether claimant is able to and available for work effective January 17, 2021 are remanded to the Benefits Bureau.

DECISION:

The unemployment insurance decision dated March 18, 2021, (reference 06) is modified in favor of the claimant/appellant. The claimant is eligible for benefits due to being partially unemployed for the weeks ending January 2 and 16, 2021. Employer is not currently chargeable for benefits, as claimant is a Group Code 8, but may be liable for future benefit charges to its account. The claimant is ineligible for benefits for the weeks ending December 26, 2020 and January 9, 2021.

REMAND: The issues of claimant's permanent separation and whether claimant is able to and available for work effective January 17, 2021 are remanded to the Benefits Bureau.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 17, 2021
Decision Dated and Mailed

jlb/scn

ⁱ Additional information can be found in the press release at

<https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>

NOTE TO CLAIMANT: 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, but who are unemployed or continue to be unemployed for reasons related to COVID-19 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at

<https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>