

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXANDER D SMITH
Claimant

APPEAL NO. 21A-UI-05259-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 11/22/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporary and/or Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2021, reference 01, decision that denied benefits effective November 22, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on April 20, 2021. The claimant did not provide a telephone number for the appeal hearing and did not participate. Jessica Wade represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the period of November 11, 2020 through December 5, 2020.
Whether the claimant was partially and/or temporarily unemployed during the period of November 11, 2020 through December 5, 2020.
Whether the employer's account may be charged for benefits for the period of November 11, 2020 through December 5, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: From October 2018 until the beginning of April 2021, the claimant was employed by the University of Iowa Hospitals & Clinics as a .90 FTE staff nurse. The claimant continues to be employed by the UHIC, but as an assistance nursing manager as of April 4, 2021. In the staff nurse position, the claimant usually worked three 12-hour shifts per week. The claimant's hourly wage during the relevant period was \$27.81 and his gross weekly wages totaled \$1,001.16. During the week of November 22-28, 2020, the claimant worked his normal schedule and earned his regular wages. During the week of November 29, 2020 through December 5, 2020, the claimant was physically and mentally able to work and available for work with the employer, but was on an unpaid temporary layoff or furlough. The claimant returned to his regular duties during the week that started December 6, 2020.

The claimant established an original claim for benefits that was effective November 22, 2020 and made weekly claims for the weeks that ended November 28 and December 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$559.00. The claimant erroneously reported \$4,416.00 in wages for the week that ended November 28, 2020. The claimant accurately reported zero wages for the week that ended December 5, 2020. m

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant is not eligible for benefits for the week that ended November 28, 2020. During that week, the claimant worked his regular 36 (.9 FTE) hours and earned wages that exceeded his \$559.00 weekly benefit amount by more than \$15.00. Based on the number of hours worked that week, the claimant did not meet the unemployment insurance "availability" requirement. Based on the hours worked and wages earned, the claimant cannot be deemed either temporarily or partially unemployed during that week.

The claimant is eligible for benefits for the week that ended December 5, 2020, provided he meets all other eligibility requirements. During that week the claimant was able to work and available for work, but temporarily laid off. The employer's account may be charged for benefits for the week that ended December 5, 2020.

Effective the week that started December 6, 2020, the claimant was once again performing the same .9 FTE work for the employer as before the furlough week. Accordingly, effective December 6, 2020, the claimant did not meet the unemployment insurance "availability" requirement and was neither temporarily or partially unemployed. Benefits are denied for the period beginning December 6, 2020.

DECISION:

The February 9, 2021, reference 01, decision is modified in favor of the claimant as follows. During the week that ended November 28, 2020, the claimant was employed, did not meet the availability requirement and was neither temporarily or partially unemployed. The claimant is not eligible for benefits for the week that ended November 28, 2020. During the week that

ended December 5, 2020, the claimant was able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for the week that ended December 5, 2020, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for the week that ended December 5, 2020. Effective December 6, 2020, the claimant was employed, was neither temporarily or partially unemployed, and was not eligible for benefits.



James E. Timberland
Administrative Law Judge

April 26, 2021
Decision Dated and Mailed

jet/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law for the week that ended November 28, 2020. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>