

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSIE C KAPPELMAN
Claimant

APPEAL NO. 22A-UI-03901-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 07/18/21
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On February 1, 2022, Jessie Kappelman (claimant) filed a timely appeal from the January 28, 2022 (reference 02) decision that denied benefits for the period beginning December 26, 2021, based on the deputy's conclusion that the claimant was still employed under the same wages and hours as in the original contract of hire and was not temporarily or partially unemployed. After due notice was issued, a hearing was held on March 14, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning December 26, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning December 26, 2021.

Whether the employer's account may be charged for benefits for the period beginning December 26, 2021.

FINDINGS OF FACT:

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

The claimant established an "additional claim" for benefits that was effective December 26, 2021. Iowa Workforce Development set the weekly benefit amount at \$651.00. Pella Corporation is the sole base period employer. The claimant made a weekly claim for the week that ended January 1, 2022. The claimant then discontinued the claim.

The claimant has at all relevant times been employed by Pella Corporation as a full-time Operator 3. The claimant's wage during the relevant period was \$22.85 an hour. The claimant is assigned to the first shift. The claimant usually works a Monday through Friday schedule.

The work day begins at 5:00 a.m. or 7:00 a.m. and ends at 3:00 p.m. During the week of December 26, 2021 through January 1, 2022, the claimant was temporarily laid-off due to a plant shutdown. The claimant was ready, willing and able to work that week, but the employer did not have any work for the claimant that week. The claimant's wages for the week were limited to \$182.80 in holiday pay. The claimant returned to the employment on January 3, 2022.

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 was able to work, available for work, but temporarily laid off during the week that ended January 1, 2022. The claimant is eligible for benefits for the week ending January 1, 2022, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits for that week. Based on the claimant's return to the full-time effective January 3, 2022, the claimant no longer met the unemployment insurance "availability" requirement and was no longer temporarily unemployed effective January 2, 2022. For that reason, benefits are denied for the period beginning January 2, 2022.

DECISION:

The January 28, 2022 (reference 02) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant was able to work, available for work, but temporarily laid off during the week of December 26, 2021 through January 1, 2022. The claimant is eligible for benefits for the benefit week ending January 1, 2022, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits for that week. Based on the claimant's return to the full-time effective January 3, 2022, the claimant no longer met the unemployment insurance "availability" requirement and was no longer temporarily unemployed effective January 2, 2022. For that reason, benefits are denied for the period beginning January 2, 2022.



James E. Timberland
Administrative Law Judge

March 24, 2022
Decision Dated and Mailed

jet/jh