

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PEDRO L CANALES ANDINO
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL 21A-UI-23359-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Respondent (2)**

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Employer filed an appeal from the October 15, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2021. Claimant did not participate. Employer participated through Cathy Anderson, Human Resources Manager. Employer's Exhibit 1 was admitted.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

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

Claimant began employment with DES Staffing Services, a temporary employment firm, on May 10, 2021. During claimant's employment, he had one assignment. Claimant worked as a full-time Laborer at Concentric International in Des Moines, Iowa. Claimant's schedule was Monday through Friday from 7:00 a.m. until 3:00 p.m. Claimant last performed work at Concentric on August 24, 2021. On August 25, 2021, claimant notified employer that he would be absent from work due to a flat tire and doctor's appointment. Claimant did not report to work and did not notify employer of absences following August 25, 2021.

On September 20, 2021, employer contacted claimant to determine if he was returning to work because employer received notice of claimant's unemployment insurance claim. Claimant told employer that he was unable to return to work at that time because his wife had Covid-19. Employer told claimant to notify them when claimant was ready to return to work. Claimant did not contact employer and offer to return to work.

Claimant filed an initial claim for unemployment insurance benefits effective September 12, 2021 and ongoing weekly claims thereafter. On each weekly claim, claimant reported that he was able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is totally unemployed and not able to and available for work. Benefits are denied.

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.

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 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(1) 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(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.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Iowa Code section 96.7(2)a(2) provides:

2. 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.


(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under

section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Since August 25, 2021, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, he is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Claimant stopped reporting to work with no notice to employer. When employer contacted claimant about returning to work, claimant stated that he was unable to return to work because his wife had Covid-19. Claimant has not contacted employer and offered to return to work. Claimant has offered no evidence that he is able to and available for work. Accordingly, benefits are denied.

DECISION:

The October 15, 2021 (reference 01) unemployment insurance decision is reversed. Claimant is totally unemployed and not able and available for work. Benefits are denied until claimant establishes that he is able to and available for work and actively and earnestly seeking work.



Adrienne C. Williamson
Administrative Law Judge
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December 27, 2021
Decision Dated and Mailed

acw/acw