

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PHIIP P MALANGO**  
Claimant

**FEDERAL EXPRESS CORP**  
Employer

**APPEAL 21A-UI-02604-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/20**  
**Claimant: Appellant (2R)**

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

**STATEMENT OF THE CASE:**

Philip P Malango, the claimant/appellant, filed an appeal from the November 25, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 9, 2021. Mr. Malango participated and testified. The employer did not participate. Official notice was taken of the administrative record.

**ISSUES:**

Is Mr. Malango totally/partially unemployed or able to and available for work?  
Is Mr. Malango 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: Mr. Malango began working for the employer, a base period employer, on July 10, 2019. He worked as a full-time driver. He worked Monday-Friday eight hours per day and he was paid \$16.10 per hour.

The employer's policy prohibits employees from getting too close to or touching the dock of the locations at which they deliver. Mr. Malango made a delivery at 11:00 a.m. on August 23, 2020. Later that day at 3:00 p.m. another driver used the same truck Mr. Malango had used and made a delivery to the same location. The employer told Mr. Malango that based on their review of the cameras on the truck he had violated the employer's policy about getting too close to the drop-off point's dock. Mr. Malango denied that he had done so. The employer suspended Mr. Malango for ten days. The employer never called Mr. Malango back and he never returned to work. Mr. Malango assumed that the employer fired him.

The issue of Mr. Malango separation from employment from this employer has not yet been investigated.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Malango is totally unemployed effective August 23, 2020.

Iowa Code § 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 § 96.19(38) 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 Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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

Mr. Malango was not paid and he did not work after August 23 because the employer suspended him. The employer didn't call Mr. Malango back to work and he did not go back to work. The employer was not offering the same wages and hours as in the base period contemplated at hire. Mr. Malango has other base-period wages. Benefits are allowed and benefit charges shall be made to this employer's account.

**DECISION:**

The November 25, 2020, (reference 01) unemployment insurance decision is affirmed. Mr. Malango was totally unemployed effective August 23, 2020. Benefits are allowed, provided he is otherwise eligible. Charges shall be made to this employer's account.

**REMAND:**

The issue of Mr. Malango's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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

March 11, 2021  
Decision Dated and Mailed

dz/lj