

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL D MOONEY
Claimant

APPEAL 21A-UI-09086-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
EMPLOYER

**OC: 02/07/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 24, 2021 (reference 02) unemployment insurance decision that denied unemployment insurance benefits effective February 7, 2021 finding that the claimant was still employed at the same hours and same wages as his original contract of hire. After due notice was issued, a telephone hearing was held on June 15, 2021. The claimant participated personally. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and same wages?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant began working for this employer on February 1, 2021. Claimant is a temporary employee who was placed on a job assignment with Scott Community College. He works full-time as a truck driver instructor. Claimant works Monday through Friday approximately 40 hours per week. During the benefit week of February 7, 2021, the claimant worked Monday, February 8, 2021 and Tuesday, February 9, 2021 but then the employer told him they were not working the rest of that week due to poor weather conditions. Claimant did not work at all the following week of February 14, 2021 through February 20, 2021 due to poor weather conditions. He returned to his regular full-time job assignment on February 22, 2021.

Claimant filed weekly-continued claims for benefits for the week-ending February 13, 2021 and the week-ending February 20, 2021. He reported the gross wages he earned during the first weekly-claim filing in the amount of \$320.00. His established weekly-benefit amount was

\$493.00. Claimant's administrative records establish that he has found to be disqualified from receipt of benefits based upon a separation from employment with a different employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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", 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".

(emphasis added).

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 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.

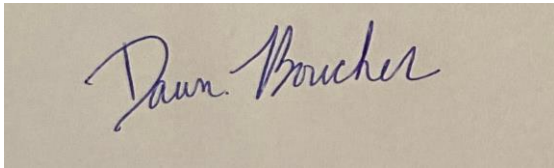
This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

In this case, the claimant was partially unemployed for the week-ending February 13, 2021 when he earned less than his weekly-benefit amount and worked less than his regular full-time hours. For the week-ending February 20, 2020, the claimant was totally unemployed as he did not work and did not earn any wages. As such, benefits are allowed effective February 7, 2021, provided the claimant is otherwise eligible.

It is noted that the claimant was found not to be otherwise eligible based upon a separation from employment with a different employer. That matter is not addressed in this decision.

DECISION:

The March 24, 2021 (reference 02) decision is reversed. Claimant was partially unemployed for the week-ending February 13, 2021 and totally unemployed for the week-ending February 20, 2021. As such, benefits are allowed effective February 7, 2021, **provided the claimant is otherwise eligible.**

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Dawn Boucher
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

db/lj