

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANNY A MCATEE
Claimant

LL PELLING CO
Employer

APPEAL 22A-UI-06389-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and available for work
Iowa Code § 96.19(38) – Total, partial, temporary unemployment
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment

STATEMENT OF THE CASE:

Danny A McAtee, the claimant/appellant, filed a timely appeal from the March 9, 2022 (reference 01) unemployment insurance (UI) decision that determined he was no longer temporarily unemployed, and required him to seek work and keep a record of his reemployment activities to remain eligible for benefits. A telephone hearing was held on April 21, 2022. The parties were properly notified of the hearing. Mr. McAtee participated personally. The employer did not participate in the hearing. The administrative law judge took official notice was taken of the administrative record.

ISSUE(S):

Is Mr. McAtee able to and available for work?
Is Mr. McAtee totally, temporarily, or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. McAtee has worked for the employer for twenty-three years. He works as a full-time dump truck driver. Mr. McAtee's work is seasonal. The employer stopped operations for the 2021-2022 winter season in November 2021. The employer had no work to offer Mr. McAtee from November 2021 and continuing until spring 2022. Mr. McAtee filed his initial claim for benefits with an effective date of November 28, 2021. He filed weekly claims each week from November 28, 2021 through the benefit week ending April 16, 2022. Mr. McAtee returned to work on April 11, 2022. The employer has a contract to do highway construction projects and is on the Iowa Workforce Development (IWD) approved list of exempt employers.

REASONING AND CONCLUSIONS OF LAW:

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

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 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.

Mr. McAtee works as a driver for a company that has a contract to work on public highways. Employees, including drivers, who work for a company that has a contract to work on public highways are exempt from reemployment activities including work searches per Iowa Code 96, subsection 4(3) and Iowa Administrative Rule 871-24(2)(1)(c). Mr. McAtee is exempt from reemployment activities including work searches.

DECISION:

The March 9, 2022 (reference 01) unemployment insurance decision is REVERSED. Mr. McAtee is exempt from reemployment activities including work searches since he works for a company that has a contract to work on public highways.



Daniel Zeno
Administrative Law Judge
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April 29, 2022
Decision Dated and Mailed

dz/scn