

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IAN S CAMPBELL
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL 21A-UI-08115-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Employment at Same Hours and Wages
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On March 22, 2021, the claimant, Ian S. Campbell, filed an appeal from the March 19, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on a leave of absence and was unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Friday, June 18, 2021. The claimant, Ian S. Campbell, participated. The employer, Lowe's Home Centers, L.L.C., did not register a participant for the hearing and did not participate. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant able to work and available for work effective January 3, 2021?
Is claimant employed at the same hours and wages as contemplated in his contract of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Lowe's Home Centers, L.L.C., on June 20, 2018. Throughout his tenure with the company, claimant has been employed as a part-time outdoor power equipment specialist. Claimant remains employed in this position with the company.

When claimant was hired, he gave the employer his availability and he was scheduled for three or four morning shifts per week. Claimant was never guaranteed any hours during his employment. Claimant's wage records reflect consistent part-time employment with the employer. Claimant's wages ranged from \$1,917.00 in his lowest quarter to \$3,068.00 in his highest quarter.

Starting around the third week of December, claimant's hours were reduced to "basically nothing." New management came into the store and they informed employees they were going to cut hours. Claimant believes he has been averaging 4.5 hours per week. Claimant has

offered to help out in other areas of the store to supplement his hours, and the employer has not scheduled him to do this.

Claimant's weekly claim filings indicate that he performed no work and reported no wages for the weeks ending January 16, January 23, and March 13, 2021. For all other weeks, claimant has worked at least some hours and reported wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work.

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 in relevant part:

"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.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed no services and received no wages during three weeks: the weeks ending January 16, January 23, and March 13, 2021. Claimant was totally unemployed for those three weeks. He was available for work and actively sought hours from the employer. He requested additional work both in his department and in other departments. He did not request days off, miss scheduled shifts, or otherwise restrict his availability for work. Claimant is eligible for unemployment insurance benefits for these three weeks.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). For the vast majority of claimant's weekly claim weeks, he was employed and working in his part-time position with the employer. Claimant was hired into a part-time position and was never guaranteed any hours. His hours have fluctuated throughout his employment, as reflected by his wage records from his base period. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, for all but three weeks of his claim, the claimant is not partially unemployed and is not eligible for benefits.

DECISION:

The March 19, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant. Claimant was totally unemployed for the weeks ending January 16, January 23, and March 13, 2021. He is eligible for benefits for those three weeks.

For all other weeks, claimant was still employed in the same hours and wages as contemplated in his contract of hire and was neither totally nor partially unemployed. Benefits are withheld for those weeks.



Elizabeth A. Johnson
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

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