

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICHOLAS A RATTRAY**  
Claimant

**AQUALAND PETS PLUS LLC**  
Employer

**APPEAL 22A-UI-03730-SN-T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OC: 12/26/21  
Claimant: Appellant (2)**

Iowa Code section 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Nicholas Rattray (claimant) filed an appeal from the December 23, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination he was ineligible for partial unemployment insurance benefits as he was employed in the same hours and wages

The parties were properly notified about the new hearing. A telephone hearing was held on March 11, 2022. The claimant participated. The employer did not participate. Official notice was taken of the administrative record, specifically the claimant's wage history and database readout (DBRO). No exhibits were offered.

**ISSUES:**

Is the claimant partially unemployed effective December 26, 2021?  
Is the claimant available for work effective December 26, 2021?  
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:

The claimant was hired to work as an associate for the employer, Aqualand Pets Plus LLC, beginning in 2014. The claimant works six hours per day on Saturday and Sunday at this employer. His rate of pay is \$7.25.

The claimant filed a claim for unemployment insurance benefits on December 26, 2021. His weekly benefit amount is \$174.00 for that claim. The claimant filed for unemployment because his seasonal job at A Cut Above ended for the season in October 2021. During the season, the claimant receives 36 to 40 hours per week from this employer. His rate of pay with this employer is \$15.00 per hour.

The administrative records KCCO and DBRO show the claimant filed weekly claims for the weeks ending January 1, 2022, January 8, 2022, January 15, 2022, January 22, 2022, January 29, 2022, February 5, 2022 and February 12, 2022. The claimant reported earning \$0.00 in insured wages for each of these weeks. The claimant worked his regularly occurring hours at Aqualand Pets Plus LLC for each of these weeks and earned \$87.00 per week.

WAGE-A shows the claimant's base period spans from the third quarter of 2020 to the second quarter of 2021. The claimant received insured wages from the employer in all four of those quarters. The claimant received insured wages from A Cut Above Lawncare in the third quarter and fourth quarter of 2020 and the second quarter of 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and able and available for work effective December 26, 2021. However, the employer Aqualand Pets Plus LLC is not subject to charge.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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", subparagraph (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 Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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), (b), and (c) 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. [Emphasis added]**

(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.

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 has performed services and earned wages for each week he has claimed benefits. He is not totally unemployed.

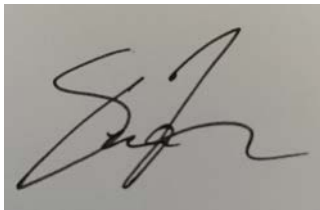
The next question is whether he is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his regular full-time work week. *Id.* The claimant was laid off from his regular full-time employer in October 2021. The claimant made \$87.00 for each week that he made weekly claims. This does not exceed \$189.00 or his weekly benefit amount of \$174.00 plus \$15.00. As a result, the claimant was partially unemployed effective December 26, 2021.

The next question is whether the claimant was able and available for work effective December 26, 2021. The claimant was working at Aqualand Pets Plus LLC. He did not indicate any problems with his ability to or availability for work during the time he made weekly claims. The administrative record KCCO shows the claimant was not making employer contacts during the time he made weekly claims.

The next question is whether the employer is subject to charge for benefits. The administrative law judge finds the employer is not subject to charge for benefits according to Iowa Code section 96.7(2)a(2)(a). The claimant was receiving the same hours and wages as in the original contract of hire and the employer shall not be charged.

**DECISION:**

The December 23, 2020, reference 01, unemployment insurance decision is reversed. The claimant is partially unemployed and able and available effective December 26, 2021. Benefits are granted. However, the employer's account (#594702) is not subject to charge because he was receiving the same hours and wages as in his original contract for hire.



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Sean M. Nelson  
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April 4, 2022  
Decision Dated and Mailed

smn/scn