

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE C PEACOCK
Claimant

MARSDEN BLDG MAINTENANCE LLC
Employer

APPEAL 21A-UI-17979-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/18/21
Claimant: Appellant (4)

Iowa Code § 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:

The claimant filed an appeal from the August 6, 2021, (reference 01) unemployment insurance decision that denied benefits based on a finding that claimant was still employed for the same hours and wages. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2021. Claimant participated personally. Employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 18, 2021?
Is the employer's account subject to charge?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: Claimant is currently employed part time as a cleaner. He was hired on October 23, 2019 to work full time hours, and worked between 30 and 40 hours until April 2020. In April 2020, his hours were dropped to between two and five hours per week. The building where he was assigned to work closed due to COVID-19, and employer does not have any other accounts to assign to claimant. Claimant's hours have remained at two hours per week since July 2021. Claimant has no restrictions on working and would work more hours if they were made available to him.

Claimant filed his initial claim for benefits effective April 19, 2020. He filed a claim for a second benefit year effective April 18, 2021. His weekly benefit amount is \$132.00. Claimant has earned less than his weekly benefit amount each week since filing his claim for benefits effective April 18, 2021. He has earned between \$24.00 and \$54.00 each week since April 18, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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.

(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.

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 Admin. Code r. 871-24.23 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.

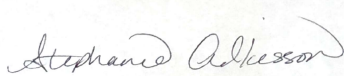
Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* An individual who is totally unemployed has been permanently separated from an employer, whereas, an individual who is temporarily unemployed has not been permanently separated from employment. In this case, the claimant has performed services and earned wages for each week he has claimed benefits effective April 18, 2021. He is not totally or temporarily unemployed.

The next question is whether he is partially unemployed. In order to be partially unemployed, an individual must be working less than his or her regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* Claimant's weekly benefit amount plus fifteen dollars is \$147.00. Any week claimant earned more than \$147.00 in gross wages he is not eligible for benefits.

Claimant reported wages between \$24.00 and \$54.00 each week effective April 18, 2021. This is less than \$147.00, his weekly benefit amount plus fifteen dollars. Claimant is partially unemployed and eligible for benefits.

DECISION:

The August 6, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was partially unemployed effective April 18, 2021, and is able to and available for work; therefore, benefits are allowed during that period provided claimant is otherwise eligible.



Stephanie Adkisson
Administrative Law Judge
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October 8, 2021
Decision Dated and Mailed

sa/kmj