

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANTHONY J KIGAR**  
Claimant

**CD HENDRIX ENTERPRISES LLC**  
Employer

**APPEAL 21A-UI-12938-ED-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/02/20**  
**Claimant: Respondent (1R)**

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Iowa Code § 96.4(3) – Able and Available for Work  
Iowa Code § 96.7(2)A(2) – Default Decision  
Iowa Code § 96.1A(37) – Totally, Partially or Temporarily Unemployed

**STATEMENT OF THE CASE:**

On May 19, 2021, employer/appellant CD Hendrix Enterprises, LLC filed an appeal from the June 9, 2021, (reference 03) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits after a separation from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for 3:00 p.m. on August 3, 2021. The employer participated through Chuck Hendrix. No exhibits were offered or received.

**ISSUE:**

Should the appeal be dismissed based on the appellant's failure to appear and participate?

**FINDINGS OF FACT:**

The claimant was employed as a part-time housekeeping supervisor. The claimant worked approximately 30 hours per week. The claimant is no longer employed with this employer. The claimant was temporarily laid off on March 15, 2020. The claimant was called back to work on April 15, 2021. The building that claimant cleaned was shut down at the time due to COVID-19. The claimant is no longer employed with this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective March 15, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) 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 § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

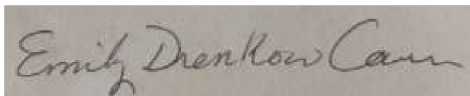
Because the claimant has was totally, temporarily unemployed from March 15, 2020 until April 15, 2021, he is eligible for benefits, provided he is otherwise eligible. The employer's account shall not be charged.

**DECISION:**

The June 9, 2021 (reference 03) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. The account of the current part-time employer shall not be charged. The benefits withheld shall be paid to the claimant, provided he is otherwise eligible. Claimant is required to report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits

**REMAND:**

The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Emily Drenkow Carr  
Administrative Law Judge

August 31, 2021  
Decision Dated and Mailed

ed/kmj