

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSSA M JOHNSON
Claimant

HOPE HAVEN INC
Employer

APPEAL NO. 23A-UI-06747-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/14/23
Claimant: Respondent (5R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On July 6, 2023, the employer filed a timely appeal from the June 29, 2023 (reference 02) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, based on a determination the claimant was able and available for work. The reference 02 decision further held that the claimant was still employed with Hope Haven, Inc. under the same conditions as predated the claim for benefits. The reference 02 and relieved that employer's account of charges for benefits so long as the employment continued under the same conditions. After due notice was issued, a hearing was held on July 25, 2023. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Amana Morony represented the employer and presented additional testimony through Connie Pagel. Exhibits 1 through 6 were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: KCCO, DBRO, WAGE-A, and the reference 01 through 05 decisions.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended May 20, 2023.

Whether the employer account of Hope Haven, Inc. may be charged for benefits for the week that ended May 20, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alyssa Johnson (claimant) established an original claim for benefits that was effective May 14, 2023. The claimant established the claimant in response to being discharged on May 10, 2023 from full-time employment with base period employer Associated Milk Producers, Inc. (employer account number 031448) for a non-disqualifying reason. See the June 6, 2023 (reference 01) decision. Iowa Workforce Development set the weekly benefit amount at \$551.00. The claimant made one weekly claim, for the week that ended May 20, 2023, and then discontinued her claim for benefits. The claimant reported in the weekly claim that she was able to work, available for work, had not refused any offers of employment, and had made five job applications. The claimant has not received benefits in connection with the claimant. One

reason the claimant did not receive benefits in connection with the claim was the claimant failure to satisfy the identity verification requirement. See the June 6, 2023 (reference 05) decision.

The claimant's base period employers also include Hope Haven, Inc. From September 29, 2022 onward the claimant was an on-call Direct Support Professional (DSP) with Hope Haven, Inc. The on-call employment with Hope Haven during this period was part-time supplemental employment relative to the full-time employment with Associated Milk Producers, Inc. The claimant last performed part-time on-call work with Hope Haven on March 13, 2023. On April 19, 2023, Hope Haven sent a letter to the claimant. The employer set forth that claimant had only worked 43 hours of the 150 annual requirement for maintaining the on-call employment. The employer set forth that the claimant had not completed training required to maintain the employment. The employer provided a May 3, 2023 deadline for the claimant to contact the employer. The employer stated the employer would deem the claimant to have voluntarily resigned if the employer did not hear from the claimant by the May 3, 2023 deadline. The employer did not hear further from the claimant. The claimant's separation from the Hope Haven was effective on or before May 3, 2023. The claimant separation from Hope Haven predated the unemployment insurance claim by 11 days or more. The claimant was not attached to the Hope Haven employment during the week that ended May 20, 2023.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

Because the claimant only made a weekly claim for the week that ended May 20, 2023, the decision need only address that one week. Because the claimant separated from this part-time, on-call employment prior to establishing the May 14, 2023 original claim, the claimant was by definition not still employed under the same hours and wages with this employer during the week that ended May 20, 2023. Because the claimant separated from this employer prior to establishing her claim for benefits, the claimant was by definition not partially unemployed from this employment during the week that ended May 20, 2023. The claimant's separation from this part-time, on-call employment and unavailability for part-time, on-call employment with this employer does not prevent the claimant from meeting the able and available requirements. The claimant would be eligible for benefits for the week that ended May 20, 2023 if she met all other eligibility requirements. IWD has determined through the June 6, 2023 (reference 05) decision that the claimant did not meet the identity verification requirement and denied benefits on that basis. Because the claimant did not receive benefits for the week that ended May 20, 2023 and because the reference 05 decision denied benefits for that week, the question of whether the employer's account may be charged for benefits for that week is moot and need not be further addressed in this decision.

This matter will be remanded to Iowa Workforce Development Benefits Bureau for adjudication of the separation from the part-time, on-call employment, which separation occurred on or before May 3, 2023.

DECISION:

The June 29, 2023 (reference 02) is MODIFIED as follows. The claimant separated from this part-time, on-call employment prior to establishing the May 14, 2023 original claim. The claimant was neither still employed under the same hours and wages nor partially unemployed from this employer during the week that ended May 20, 2023. Neither the separation from this employment nor the claimant's unavailability for part-time, on-call work with this employer would prevent the claimant from meeting the able and available requirements for the week that ended May 20, 2023. The claimant would be eligible for benefits for the week that ended May 14, 2023 if the claimant met all other eligibility requirements. Because the claimant has not received benefits for the week that ended May 20, 2023, the question of whether the employer's

account may be charged for benefits for that week in connection with the able and available determination is moot.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for adjudication of the separation from the part-time, on-call employment, which separation occurred on or before May 3, 2023.



James E. Timberland
Administrative Law Judge

07/27/23
_ Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.