

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATE M GAMBLIN
Claimant

PEOPLEREADY INC
Employer

APPEAL 18A-UI-12197-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/25/18
Claimant: Respondent (5R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability for Work – part-time employment

STATEMENT OF THE CASE:

Peopleready, Inc. (employer) filed an appeal from the December 10, 2018, reference 01, unemployment insurance decision that allowed benefits effective November 25, 2018, based upon the determination Kate M. Gamblin (claimant) was still employed part-time but not in the same pattern of employment as in her base period. After due notice was issued, a telephone conference hearing was held on January 9, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Staffing Specialist Amanda Tyler.

ISSUES:

Is the claimant partially or totally unemployed?
Is the claimant able to work, available for work, and actively and earnestly seeking work effective November 25, 2018?
Is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked in a temporary full-time position as a Flagger for the employer's client Road Safe Traffic until November 26, 2018, when the assignment ended. The claimant worked a total of 16 hours on November 25 and 26 at \$15.90 an hour earning gross wages of \$254.00. The claimant filed her claim for benefits effective November 25 and reported she was laid off due to a lack of work. The claimant's weekly benefit amount is \$435.00. The claimant filed her weekly continued claim for benefits for the week ending December 1 and reported \$68.00 in wages earned. The issue of whether the claimant under reported her wages earned has not been investigated or adjudicated by the Investigation and Recovery Bureau of Iowa Workforce Development (IWD).

The claimant was separated from the employer on November 30. The issue of whether the claimant's separation qualifies her for benefits has not been investigated or adjudicated by the Benefits Bureau of IWD.

The claimant is currently classified as a group code "3," or temporarily laid off, in the IWD system and has not conducted any job searches while unemployed. She has also not been warned to expand her search for work. The administrative record shows the claimant has not reported any wages earned for the five weeks between December 2, 2018 and January 5, 2019. The employer does not have any reason to believe the claimant is not able to work or available for work during this timeframe. This employer is the only employer in the claimant's base period and shows wages earned in a full-time capacity for the majority of the quarters.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed during the week ending December 1, 2018. The claimant is totally unemployed effective December 2, 2018 and is able to and available for work. Benefits are allowed.

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:

"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 Admin. Code r. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest

and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

- (1) Making application with employers as may reasonably be expected to have openings suitable to the individual.
- (2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.
- (3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.
- (4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.
- (5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.
- (6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.
- (7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

An employee is partially unemployed and does not have to be able to work, available for work, and actively and earnestly seeking work, if during any week they work less than their regular

full-time hours and earn less than their weekly benefit amount plus fifteen dollars or if they are laid off due to a lack of work for no more than four weeks. The claimant worked and was employed during the week ending December 1. She earned less than her weekly benefit amount plus fifteen dollars. The claimant was partially unemployed. The issue of whether the claimant under reported her wages for that week is remanded to the Investigation and Recovery Bureau of IWD for an initial investigation and determination.

The unrefuted testimony from the employer is that the claimant separated from employment on November 30. The issue of whether the claimant's separation qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

Based on the employer's unrefuted testimony about the separation, the claimant was not temporarily laid off due to a lack of work. As such, the claimant must be able to work, available for work, and actively and earnestly seeking work to remain eligible for benefits. An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The evidence presented indicates the claimant is able to and available for work. The administrative record shows the claimant has not conducted any job searches effective December 2, when she became totally unemployed. The claimant has not received any prior warning to expand her job search. This is the claimant's warning that she must expand her job search and conduct two job searches each week. However, as she did not receive a prior warning, benefits are allowed effective December 2, 2018.

DECISION:

The December 10, 2018, reference 01, unemployment insurance decision is modified with no change in effect. The claimant was partially unemployed during the week ending December 1, 2018 and benefits are allowed. The claimant is able to and available for work effective December 2, 2018; however, this is her warning that she needs to expand her job search and actively and earnestly seek work to remain eligible for benefits. Benefits are allowed.

REMANDS:

The issue of whether the claimant under reported her wages earned with the employer for the week ending December 1, 2018 is remanded to the Investigation and Recovery Bureau of IWD for an initial investigation and determination.

The issue of whether the claimant's separation from employment on November 30, 2018 qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination. Additionally, the claimant's group code needs to be updated to a "6" and work searches are required for her to remain eligible for benefits.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn