

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOEL F MYERS

Claimant

KELLY SERVICES INC

Employer

APPEAL 22A-UI-01299-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/14/21

Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On December 14, 2021, Kelly Services Inc. (employer/appellant) filed a timely appeal from the December 9, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning November 14, 2021 based on a finding claimant was able and available for work and working during a short-term layoff.

A telephone hearing was held on December 7, 2022. The parties were properly notified of the hearing. Joel Myers (claimant/respondent) participated personally. Employer participated by Talent Advisor Valerie Craig. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the claimant able to and available for work?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the claimant still employed at the same hours and wages?
- IV. Was the claimant unemployed as a result of a labor dispute?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in June 2013. Claimant has been on assignment with John Deere since that time. Claimant has worked about 15 hours per week in that assignment for many years, with the availability of work often fluctuating based on employer need. Claimant agreed to this arrangement and has not sought steady work elsewhere. This is due to his not wanting to work more than that for personal reasons.

There was no work available for claimant in the weeks ending November 20, November 27, and December 4, 2021. There was no work available in the weeks ending January 1, 8, 15, and 22, 2022. There was a strike at claimant's place of employment for a portion of that time but the strike involved employees of John Deere and not individuals in claimant's position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 9, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning November 14, 2021 based on a finding claimant was able and available for work and working during a short-term layoff is REVERSED. Claimant is ineligible for benefits effective November 14, 2021.

Iowa Code section 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 section 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 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.

Unemployment insurance benefits are designed to operate as a safety net for individuals who are true participants in the labor market - who are able to work, available for work, and earnestly and actively seeking work - and yet through no fault of their own are unemployed.

This is not the situation claimant is in. He has chosen to be employed in a position where he works as work is available and in any event rarely more than 15 hours per week. This is due to his not wanting to work more than that for personal reasons. While claimant is certainly free to make such an arrangement with employer, periods where work is unavailable in this arrangement are a feature of that position and claimant has therefore essentially agreed to be unemployed during these periods. Claimant is not a true participant in the labor market due to his limiting his availability for work for personal reasons and agreeing to an arrangement where he would work as work was available. He is therefore ineligible for benefits in the weeks filed.

Claimant is not disqualified from benefits due to a work stoppage caused by a labor dispute. There was a strike at claimant's place of employment for a portion of the time he filed for unemployment insurance benefits but the strike involved employees of John Deere and not individuals in claimant's position. Claimant's unemployment was not due to the strike but for the reasons set forth above.

DECISION:

The December 9, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning November 14, 2021 based on a finding claimant was able and available for work and working during a short-term layoff is REVERSED. Claimant is ineligible for benefits effective November 14, 2021.

REMAND:

This matter is remanded to the Department for a determination as to whether claimant has been overpaid benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 24, 2022
Decision Dated and Mailed

abd/abd