

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RILEY G RUTHER
Claimant

HUCKLEBERRY ENTERTAINMENT LLC
Employer

APPEAL 20A-UI-11910-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (5R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 16, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective June 14, 2020 due to him not being able to and available for work. The parties were properly notified of the hearing. A telephone hearing was initially held on November 20, 2020. At the time the hearing was held, the administrative law judge lacked jurisdiction on the matter. Following the issuance of due notice, a second telephone hearing was held on December 18, 2020. The claimant, Riley G. Ruther, participated personally. Carrie Ruther observed on behalf of the claimant. The employer, Huckleberry Entertainment LLC, participated through witnesses Steve Morley and Scott Briggs. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on October 25, 2018 as a part-time arcade attendant. He was never guaranteed a certain number of hours when hired and his hours consistently varied.

On March 17, 2020 the employer's arcade was closed down due to the COVID 19 pandemic. The arcade reopened on June 15, 2020. On or about the time of reopening, the claimant had commitments to his baseball team and was unavailable for several hours during the day from Monday through Friday.

The claimant permanently separated from employment on or about July 30, 2020. The issue of whether the claimant's separation from employment is disqualifying has not been the subject of an initial investigation or determination by the Benefits Bureau of Iowa Workforce Development. That matter will be remanded for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

Effective June 14, 2020, the claimant limited his available hours to work due to other personal commitments. Further, when an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide the same employment and the claimant was employed under the same hours and wages as contemplated when he was hired, he is not considered partially unemployed effective June 14, 2020. Regular unemployment insurance benefits funded by the State of Iowa are denied effective June 14, 2020.

DECISION:

The September 16, 2020 (reference 01) decision is modified with no change in effect. Claimant was not able to and available for work. Claimant was still employed at the same hours and same wages and was therefore not unemployed effective June 14, 2020. Regular unemployment insurance benefits funded by the State of Iowa are denied effective June 14, 2020.

REMAND:

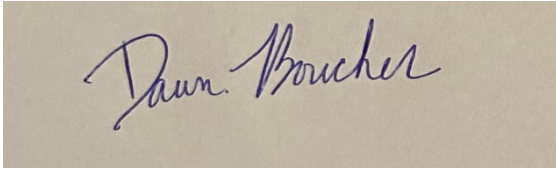
The separation issue delineated in the findings of fact is remanded to the Benefits Bureau for an initial investigation and determination.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

A rectangular area containing a handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

December 21, 2020
Decision Dated and Mailed

db/scn