

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

PAULA TERWILLIGER
Claimant

APPEAL NO. 23A-UI-01423-JT-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

NEW COOPERATIVE INC
Employer

**OC: 01/22/23
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

On February 13, 2023, Paula Terwilliger (claimant) filed a timely appeal from the February 9, 2023 (reference 01) decision that denied benefits effective January 22, 2023, based on the deputy's conclusion the claimant was still employed same hours and wages as in the original contract of hire and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 28, 2023. Claimant participated. Pam Blair, Human Resources Coordinator, represented the employer. Exhibits 1, 2, 3 and A were received into evidence. The administrative law judge took official notice of the following IWD administrative records: KCCO, DBRO, WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since January 22, 2023.
Whether the claimant was partially and/or temporarily unemployed since January 22, 2023.
Whether the employer's account may be charged for benefits for the period beginning January 22, 2023.

FINDINGS OF FACT:

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

Paula Terwilliger has at all relevant times been employed by New Cooperative, Inc. as a full-time Tender Driver. The work involves delivering fertilizer to farms so that it can be applied to farm fields outside the growing season. The employer's busiest season is in the fall after harvest. The employer's second busiest time of the year is in the spring before planting season. Since October 2022, the claimant's hourly wage has been \$19.50. Prior to that, the wage was \$17.00 for about a year.

The claimant established an original claim for benefits that was effective January 22, 2023 in anticipation of being temporarily laid off. Iowa Workforce Development set the weekly benefit amount at \$551.00. New Cooperative is the claimant's primary base period employer.

By the time of the February 28, 2023 appeal hearing, the claimant had made weekly claims for the five weeks between January 22, 2023 and February 25, 2023.

During the week that ended January 28, 2023, the employer provided 41.25 hours of work, for which the claimant earned \$804.38.

During the week that ended February 4, 2023, the employer provided 6.5 hours of work, for which the claimant earned \$126.75.

During the week that ended February 11, 2023, the employer provided 33.75 hours of work, for which the claimant earned \$658.00. The claimant last performed work for the employer on February 10, 2023.

The employer did not have work for the claimant during the weeks that ended February 18 or February 25, 2023. The claimant earned no wages during those weeks. The employer anticipates recalling the claimant to the employment in March 2023.

Since establishing the original claim that was effective January 22, 2023, the claimant has remained ready, able and willing to perform full-time work for the employer.

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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

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).

The claimant is not eligible for benefits for the weeks that ended January 28, 2023 and February 11, 2023. During those weeks the claimant worked full-time or near full-time hours and earned wages that exceeded the weekly unemployment insurance benefit amount by more than \$15.00. Because the claimant was working to the extent she was, the claimant did not meet the unemployment insurance "availability" requirement during those weeks. Based on the wages earned, the claimant was not partially unemployed during those weeks.

The claimant is eligible for benefits for the week that ended February 4, 2023, provided she meets all other eligibility requirements. During that week, the claimant was able to work, available for work, but partially unemployed. The claimant was available for full-time work, but the employer only had 6.5 hours and the claimant only earned \$126.75.

During the period beginning February 12, 2023, the claimant has been able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for this period, provided she meets all other eligibility requirements.

The employer's account may be charged for benefits for those weeks in which the claimant was temporarily or partially unemployed.

DECISION:

The February 9, 2023 (reference 01) decision is MODIFIED in favor of the claimant/appellant as follows.

The claimant is not eligible for benefits for the weeks that ended January 28, 2023 and February 11, 2023. During those weeks the claimant did not meet the unemployment insurance "availability" requirement during those weeks and was not partially unemployed during those weeks.

The claimant is eligible for benefits for the week that ended February 4, 2023, provided she meets all other eligibility requirements. During that week, the claimant was able to work, available for work, but partially unemployed.

During the period beginning February 12, 2023, the claimant has been able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for this period, provided she meets all other eligibility requirements.

The employer's account may be charged for benefits for those weeks in which the claimant was temporarily or partially unemployed.



James E. Timberland
Administrative Law Judge

March 9, 2023
Decision Dated and Mailed

jet/mh

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.