

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KYLEE L VINSON
Claimant

APPEAL NO. 21A-UI-01302-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEDONA STAFFING SERVICE LLC
SEDONA STAFFING INC**
Employer

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 14, 2020, reference 01, decision that allowed benefits for the period beginning November 15, 2020, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available to work, but that the employer was not providing employment in the same pattern as existed earlier in the employment. After due notice was issued, a hearing was held on commenced on March 11, 2020 and concluded on March 12, 2020. The claimant participated. Colleen McGuinty represented the employer. Exhibits 1 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of November 15, 2020 through January 23, 2021.

Whether the claimant was partially and/or temporarily unemployed during the period of November 15, 2020 through January 23, 2021.

Whether the employer's account may be charged for benefits for the period of November 15, 2020 through January 23, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Sedona Staffing, Inc. and is a full-time, long-term assignment at The Raymond Corporation. The claimant began the assignment on October 5, 2020. The claimant's usual work hours are 6:00a.m. to 2:30 p.m., Monday through Friday. The claimant's wage is \$13.84 an hour.

During the week that ended November 21 2020, the client business had less than full-time work for the claimant. The claimant's supervisor, Jake Raymond, advised the claimant that the lack of work was based on a couple of fork trucks being broken. Raymond advised Sedona Staffing that the basis for the temporary shutdown was a COVID-19 outbreak and the need to deep

clean the production facility. The claimant worked 7.75 hours that week and earned \$107.26 in wages. The claimant returned to full-time hours the following week.

During the week that ended January 2, 2021, the claimant worked a partial week until the client business shutdown for the holidays. The claimant worked a total of 24 hours and her wages for the week were \$332.16. The claimant returned to full-time hours the following week.

During the week that ended January 16, 2021, the client business only had 17.08 hours for the claimant and the claimant earned \$236.39 in weekly wages. The claimant returned to full-time hours the following week.

The claimant was at all relevant times able to perform full-time work and available for full-time work in the assignment. In connection with those weeks where Raymond did not have full-time hours for the claimant, no one from Raymond or Sedona Staffing told the claimant that she was expected to make herself available for other short-term assignments. The claimant worked all the hours that were made available to her during the weeks in question. During the other weeks between November 15, 2020 and January 23, 2021, the client business had full-time work for the claimant and the claimant worked full-time hours.

The claimant established an "additional claim" for benefits that was effective November 15, 2020. The claimant's weekly benefit amount was set at \$420.00. The additional claim was based on a claim year that began on April 12, 2020. *This employer is not a base period employer for purposes of the current claim year and has not been charged for benefits.* The claimant made weekly claims for each of the weeks between November 15, 2020 and January 2, 2021. The claimant then discontinued her claim.

The claimant did not have an active claim in effect for the week that ended January 16, 2021 and did not make a weekly claim for that week.

The claimant established another additional claim that was effective January 17, 2021. The claimant made a weekly claim for the week that ended January 23, 2021. However the claimant was back at work full-time that week. The claimant again discontinued her claim following the week that ended January 23, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 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 Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

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 not receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

This employer is not a base period employer for purposes of the claim year that began April 12, 2020 and, therefore, had not been for benefits paid to the claimant.

The claimant was able to work, available for work, but partially unemployed during the weeks that ended November 21, 2020 and January 2, 2021. The claimant is eligible for benefits for those two weeks, provided she is otherwise eligible.

During the weeks that ended November 28, December 5, December 12, December 19, and December 26, 2020, the claimant was working sufficient hours to be considered employed full-time, earned wages that exceeded her weekly benefit amount by more than \$15.00, and was not partially unemployed. The claimant is not eligible for benefits for these weeks.

The claimant did not have an active claim in effect for the week that ended January 16, 2021, did not make a weekly claim for that week, and is not eligible for benefits for that week.

During the week that ended January 23, 2021, the claimant worked full-time, was not unemployed, did not meet the "availability" requirement, and was not eligible for benefits.

DECISION:

The December 14, 2020, reference 01, decision is modified in favor of the employer/appellant as follows. This employer is not a base period employer for purposes of the claim year that began April 12, 2020 and, therefore, shall not be charged for benefits paid to the claimant during the current benefit year.

The claimant was able to work, available for work, but partially unemployed during the weeks that ended November 21, 2020 and January 2, 2021. The claimant is eligible for benefits for those two weeks, provided she is otherwise eligible.

During the weeks that ended November 28, December 5, December 12, December 19, and December 26, 2020, the claimant was working sufficient hours to be considered employed full-time, earned wages that exceeded her weekly benefit amount by more than \$15.00, and was not partially unemployed. The claimant is not eligible for benefits for these weeks.

The claimant did not have an active claim in effect for the week that ended January 16, 2021, did not make a weekly claim for that week, and is not eligible for benefits for that week.

During the week that ended January 23, 2021, the claimant worked full-time, was not unemployed, did not meet the "availability" requirement, and was not eligible for benefits.



James E. Timberland
Administrative Law Judge

March 22, 2021
Decision Dated and Mailed

jet/lj