

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN K BUTLER
Claimant

APPEAL 22A-UI-07069-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/26/21
Claimant: Appellant (5R)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment

STATEMENT OF THE CASE:

On March 20, 2022, Kevin Butler (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 10, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits.

A telephone hearing was held on May 5, 2022. The parties were properly notified of the hearing. Claimant participated personally. His wife, Sian Butler, participated as a witness. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. 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 began working for employer 32 years ago. Claimant remains employed there. Claimant is employed as a heavy equipment truck driver working on federal highway jobs. The work is seasonal in nature. Claimant is laid off each winter due to a lack of work and then returns to work in the spring each year. Claimant was laid off most recently on December 21, 2021. He returned to work on April 27, 2022.

Claimant opened an original claim for benefits with an effective date of December 26, 2021. He has filed weekly claims each week from the benefit week ending January 1, 2022 through the benefit week ending April 30, 2022. There was no work available again and claimant did not earn wages in any of those weeks except the week ending April 30, 2022. He earned wages in the amount of \$594.00 in that week. Claimant’s weekly benefit amount is \$531.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 10, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect.

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".

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 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.

Claimant was initially unemployed due to a lack of work, beginning with the benefit week ending January 1, 2022. Claimant ceased to be temporarily unemployed and became totally unemployed after the benefit week ending January 22, 2022. This is because an individual cannot be temporarily unemployed for a period exceeding four consecutive weeks.

Claimant was then totally unemployed from the week ending January 29, 2022 through the benefit week ending April 23, 2022, as he performed no work during this period.

Claimant was not totally, partially, or temporarily unemployed in the benefit week ending April 30, 2022, as he performed some work for employer and earned wages in excess of his weekly benefit amount plus \$15.00 in that week.

An individual who is temporarily unemployed or partially unemployed while still attached to their regular employer need not be able to work, available for work, and earnestly and actively seeking work during each week filed in order to be eligible for benefits in that week. However, an individual who is totally unemployed must meet those requirements in order to be eligible for benefits each week.

Iowa Code Section 96.4(3)b allows the Department to establish by rule a process to waive or alter the work search requirements in certain situations. The administrative law judge has searched the relevant sections of the Iowa Administrative Code and is unable to locate any such rule.

The administrative law judge must apply the law as it exists. The law does not allow temporary unemployment for more than four consecutive weeks or a waiver of work search requirements absent establishment by rule of a process for such a waiver.

The administrative law judge does not find it appropriate to decide for the first time on appeal whether claimant was able to work, available for work, and earnestly and actively seeking work and thus eligible for benefits during the weeks he was not partially or temporarily unemployed. That matter is therefore remanded to the Benefits Bureau for a fact-finding investigation and determination on that issue.

DECISION:

The decision dated March 10, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect.

It is modified to clarify whether claimant was totally, partially, or temporarily unemployed and thus must seek work in each week filed as set forth above. Claimant was temporarily unemployed from the benefit week ending January 1, 2022 and continuing through the benefit week ending January 22, 2022. Claimant was totally unemployed from the week ending January 29, 2022 through the benefit week ending April 23, 2022. Claimant was not totally, partially, or temporarily unemployed in the benefit week ending April 30, 2022.

REMAND:

This matter is remanded to the Benefits Bureau for a fact-finding investigation and determination regarding whether claimant was able to work, available for work, and earnestly and actively seeking work and thus eligible for benefits during the weeks he was not partially or temporarily unemployed.



Andrew B. Duffelmeyer
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May 10, 2022
Decision Dated and Mailed

abd/abd