

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KOMI L ETOU
Claimant

APPEAL 21A-UI-06137-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 08/25/19
Claimant: Appellant (4)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 23, 2021, (reference 07) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2021. The claimant participated through a French interpreter with CTS Language Link. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective June 7, 2020?
Is the employer's account subject to charge?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: The claimant has been employed full time as a forklift driver since August 3, 2018.

Claimant developed COVID-like symptoms during the week of June 7, 2020. He was off work due to illness and returned to work on June 18, 2020.

Claimant did not work during the week of August 9, 2020, due to a lack of work caused by the derecho in Cedar Rapids, Iowa. Claimant returned to work the week of August 16, 2020.

Claimant filed for unemployment insurance benefits with an effective date of August 25, 2019. He filed an additional claim on June 7, 2020. His weekly benefit amount (WBA) was determined to be \$474.00.

For the week ending June 13, 2020, claimant reported earning \$588.00 for this week. The claimant did not receive regular unemployment benefits for this week.

For the week ending June 20, 2020, claimant reported earning \$294.00 for this week. The claimant received \$298.00 in regular unemployment benefits for this week.

For the week ending August 15, 2020, claimant reported no earnings this week. The claimant did not received \$474.00 in regular unemployment benefits for this week.

For the week ending August 22, 2020, claimant reported earning \$700.00 for this week this week. The claimant did not receive regular unemployment benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge:

Iowa Code § 96.19(38) 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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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", 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. 871-24.23 provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed no services and earned no wages for the week ending August 15, 2020, because he was laid off due to a lack of work from employer resulting from the derecho. He is temporarily unemployed and is eligible for benefits for the week ending August 15, 2020.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be working less than his or her regular full-time work week and earn less than their weekly benefit amount plus fifteen dollars. *Id.* Claimant's weekly benefit amount plus fifteen dollars is \$489.00. Any week claimant earned more than \$489.00 in gross wages he is not eligible for benefits.

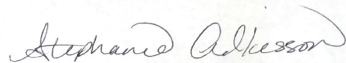
Claimant earned less than \$489.00 for the week ending June 20, 2020. However, claimant was ill with COVID-like symptoms and was granted a leave of absence. Claimant has not established he is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement the week ending June 20, 2020. See Unemployment Insurance Program Letter No. 10-20. Claimant is thus not eligible for benefits the week ending June 20, 2020.

Claimant earned more than \$489.00 for the weeks ending June 13, 2020 and August 22, 2020. He is therefore not considered unemployed and benefits are denied for this period.

DECISION:

The February 23, 2021, (reference 07) unemployment insurance decision is modified in favor of claimant. Claimant was temporarily unemployed for the week ending August 15, 2020. Benefits are allowed for that week, provided claimant is otherwise eligible.

Claimant was not unemployed for the weeks ending June 13, 2020 and August 22, 2020; therefore, benefits are denied for those weeks. Additionally, claimant was not able to and available for work the week ending June 20, 2020 and benefits are denied for this week.



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

May 14, 2021
Decision Dated and Mailed

sa/kmj

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for

reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.