

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOE W ORR
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 21A-UI-06771-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (3)

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 March 1, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on May 12, 2021. The claimant did not register for the hearing and did not participate. The employer Team Staffing Solutions, Inc. participated through risk manager Sarah Fiedler. 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 November 22, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a staffing agency. Claimant was assigned to work full time at CBM on October 22, 2020. He remained working there until January 14, 2021, when he separated from the employment.

Claimant filed an additional claim for benefits the week ending November 28, 2020. His employer shut down the plant for a portion of the week. Claimant's weekly benefit amount is \$334.00. Claimant earned and reported weekly wages of \$280.00 for the week ending November 28, 2020. He earned and reported weekly wages of \$360.00 for the one-week period ending December 5, 2020. Claimant earned and reported weekly wages of \$500.00 for the one-week period ending December 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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.

(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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for 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.* An individual who is totally unemployed has been permanently separated from an employer, whereas, an individual who is temporarily unemployed has not been permanently separated from employment. Claimant performed services and earned wages during the three-week period.

To be partially unemployed, an individual must be working less than their 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 \$349.00. Any week claimant earned more than \$349.00 in gross wages he is not eligible for benefits.

Claimant earned \$280.00 for the one-week period ending November 28, 2020. This is less than his weekly benefit amount plus fifteen dollars. Claimant was partially unemployed and eligible for benefits during this period.

Claimant earned \$360.00 for the week ending December 5, 2020 and \$500.00 for the week ending December 12, 2020. This is greater than his weekly benefit amount plus fifteen dollars. Claimant is therefore not considered unemployed and benefits are denied for these periods.

DECISION:

The March 1, 2020, (reference 01) unemployment insurance decision is modified in favor of the respondent. The claimant was partially unemployed during the week ending November 28, 2020. Benefits are allowed.

Claimant was not unemployed during the two week-period ending December 12, 2020. Benefits are denied.



Stephanie Adkisson
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May 20, 2021
Decision Dated and Mailed

sa/scn