

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOGES T SEMANHE
Claimant

APPEAL NO. 21A-UI-08592-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 02/09/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2021, reference 03, decision that denied benefits effective July 12, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on June 9, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and NMRO.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning July 12, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning July 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective February 9, 2020. Wells Enterprises, Inc. is a base period employer. The claimant made weekly claims through the benefit week that ended July 11, 2020 and received benefits for that period. The claimant returned to his full-time employment at Wells Enterprises on Monday, July 13, 2020 and discontinued his claim for unemployment insurance benefits at that time. The claimant has continued in the full-time employment since July 13, 2020 to the present.

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.

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).

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.

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.

Since July 13, 2020, the claimant has been employed full-time, and therefore has not been temporarily, totally, or partially unemployed within the meaning of the law. Because of the full-time employment, the claimant has not met the unemployment insurance "availability" requirement since July 13, 2020. In addition, the claimant has not filed any weekly claims for the period beginning July 12, 2020. Benefits are denied effective July 12, 2020.

DECISION:

The March 23, 2021, reference 03, decision is affirmed. The claimant has not met the availability requirement and has not been temporarily, totally or partially unemployed within the meaning of the law since July 12, 2020. Benefits are denied effective July 12, 2020.



James E. Timberland
Administrative Law Judge

June 24, 2021
Decision Dated and Mailed

jet/lj