

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT A WILEY

Claimant

VENUWORKS OF CEDAR RAPIDS LLC

Employer

APPEAL NO. 21A-UI-14080-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 7, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 13, 2021. Claimant participated personally. Employer participated by Sean Meloy. Employer's Exhibits A-C were admitted into evidence

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for VenuWorks, a base period employer, as an on-call worker under the same terms and conditions as contemplated in the original contract of hire. Claimant also has other on call wages in the base period history. Claimant is not guaranteed any hours with employer.

Claimant works for the local union as a stage hand. When employer needs work for shows or activities at the local facility, employer contacts the local union and the union then goes by seniority for jobs needed. For small shows, employer may also directly contact stage workers. During the pandemic, employer had far fewer shows than historically had been set at the venue, and claimant worked fewer hours than he'd historically worked.

Claimant filed a second year's claim in March 2021 as claimant continued to not have his regular amount of work.

Claimant has continued to file for benefits and has reported his weekly earnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 Code section 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 Admin. Code r. 871-24.23(26) 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.

Because the claimant is continuing to work in the same as-needed basis for employer that he has always worked, claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The July 14, 2021, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

September 16, 2021
Decision Dated and Mailed

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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 due to disqualifying separations 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>.