

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MURRAY L HETH
Claimant

**TEAM MANAGEMENT & CONSULTING
LLC**
Employer

APPEAL 22A-UI-04490-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/02/22
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able & Available
Iowa Code § 96.19(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

On February 13, 2022, the claimant filed an appeal from the February 8, 2022 (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant was not able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2022. Claimant, Murray Heth, participated and testified. Employer did not call the toll-free number listed on the notice of hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Does the claimant meet the definition of being considered partially unemployed?
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 on March 14, 2017. Claimant last worked as a full-time pipe-line inspector. Claimant remains employed by the employer but there are some weeks during the winter months where the employer does not have work available for the claimant as contemplated in the original contract of hire and as established by the base period work history.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

Because the claimant is not currently employed under the same hours and wages as contemplated at hire, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account effective January 2, 2022.

DECISION:

The February 8, 2022, (reference 01) unemployment insurance decision is reversed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed. The employer's account (516105-000) may be liable for charges.



Jason Dunn
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March 31, 2022

Decision Dated and Mailed

jd/abd