

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN J HORSTMAN
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL 21A-UI-05917-S1-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/20/20
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Kevin Horstman (claimant) appealed an Iowa Workforce Development February 16, 2021, decision (reference 03) that denied benefits based on his continued employment with DES Staffing Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2021. The claimant participated personally. The employer participated by Jamie Scott, Human Resources Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant had one assignment during his employment. He worked at TM Logistics/Hodge from November 30, 2020, through January 22, 2021, as a full-time forklift operator and earned \$12.25 per hour.

The claimant filed for unemployment insurance benefits with an effective date of December 20, 2020. His weekly benefit amount (WBA) was determined to be \$439.00. For the benefit week ending December 26, 2020, the claimant worked 23.97 hours and earned \$294.00 in wages. He reported to the agency \$196.00 in wages. The employer reduced the claimant's hours due to the holidays. For the benefit week ending January 2, 2021, the claimant worked eight hours and earned and reported to the agency \$98.00 in wages. The employer reduced the claimant's hours due to the holidays.

For the benefit week ending January 9, 2021, the claimant worked 39.63 hours and earned \$772.00 in wages. He reported to the agency \$380.00 in wages. For the benefit week ending January 16, 2021, the claimant worked 41.92 hours and earned \$514.00 in wages. He reported to the agency \$380.00 in wages. For the benefit week ending January 23, 2021, the claimant worked 34.45 hours and earned \$422.00 in wages. He reported to the agency \$295.00 in wages.

On January 22, 2021, the claimant was exposed to Covid-19. He took a test and his physician told him to quarantine until February 2, 2021. The claimant notified the employer. For the benefit week ending January 30, 2021, the claimant did not work any hours or earn any wages. The claimant was awarded Pandemic Unemployment Assistance starting January 24, 2021.

While in quarantine, the claimant was offered a job at Dohrn Transfer in Rock Island, Illinois. Due to his quarantine, Dohrn Transfer asked him to start work on February 8, 2021, rather than on February 1, 2021. On February 3, 2021, the claimant told the employer he was not returning to work with TM Logistics/Hodge or the employer.

REASONING AND CONCLUSIONS OF LAW:

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 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 96.1A, 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 Admin. Code r. 871-24.23(1) provides:

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

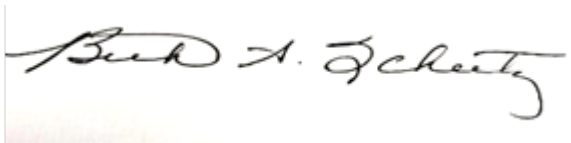
(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with an employee who was diagnosed with Covid-19. To prevent the spread of a deadly virus, the claimant's doctor removed and quarantined the claimant from the workplace. He was not able and available for work during the quarantine. The claimant is disqualified from receiving state unemployment insurance benefits from January 24, 2021, through January 31, 2021.

From December 26, 2020, through January 23, 2021, the claimant was employed and earning wages. He cannot be considered totally or temporarily unemployed. The issue becomes whether he was partially unemployment insurance benefits. For a worker to be partially unemployed, he must be earning less than his WBA plus \$15.00. For the two weeks ending January 16, 2021 the claimant earned greater than \$454.00, his WBA plus \$15.00. He cannot be considered partially unemployed. For the two weeks ending January 2, 2021, and the week ending January 23, 2021, the claimant was partially unemployed. Benefits are allowed for those three weeks, provided the claimant is otherwise eligible.

DECISION:

The February 16, 2021, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant is disqualified from receiving state unemployment insurance benefits from January 24, 2021, through January 31, 2021, for not being able to and available for work. For the two weeks ending January 2, 2021, and the week ending January 23, 2021, the claimant was partially unemployed. Benefits are allowed for those three weeks, provided the claimant is otherwise eligible.



Beth A. Scheetz
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May 18, 2021
Decision Dated and Mailed

bas/scn