

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY NEWBROUGH
Claimant

TAHER INC
Employer

APPEAL 21A-UI-03790-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

Zachary Newbrough (claimant) appealed a representative's January 22, 2021, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits as of November 15, 2020, because a leave of absence was granted by Taher (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 31, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is available for work, whether the claimant was on an approved leave of absence, and whether the claimant is eligible for total or partial unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 5, 2020, and he is currently working as a full-time lead chef/cook. His hourly rate of pay is \$10.00 and he generally works thirty-five hours per week.

On November 13, 2020, the claimant tested positive for Covid-19. A public health official told him to quarantine from November 13, 2020, through November 28, 2020. He returned to work after the quarantine.

The employer did not have work for the claimant from November 22, 2020, through November 25, 2020, December 20, 2020, through January 2, 2021, and from March 14, 2021, through March 20, 2021.

The claimant started working part-time for Cobblestone Inn in Winterset, Iowa, in early March 2021. He was paid \$10.00 per hour and worked seven hours per week.

The claimant filed for unemployment insurance benefits with an effective date of November 15, 2020. His weekly benefit amount (WBA) was determined to be \$97.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after November 15, 2020. He reported earned wages but the amounts were incorrect. On March 30, 2021, the claimant provided the department with the correct wages earned. When working, he earned approximately \$350.00 per week from the employer and \$70.00 per week from Cobblestone Inn.

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 96.1A, 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 96.19(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. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The request may be from the worker or from a physician and delivered to the employer by the worker. The claimant requested a medical leave of absence due to quarantine and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the quarantine/leave of absence and is not eligible to receive unemployment insurance benefits for the two weeks ending November 28, 2020.

The claimant asserts he was temporarily unemployed for three separate periods. The first period is from November 22 through 25, 2020. This is the benefit week ending November 28, 2020. This period was discussed above. The claimant was not able and available for work for this week and disqualified for benefits.

The second period is from December 20, 2020, through January 1, 2021. This is the two weeks ending January 2, 2021, for benefit purposes. The employer had no work available and the

period of time did not exceed four consecutive weeks. The claimant is considered to be temporarily unemployed for the two weeks ending January 1, 2021.

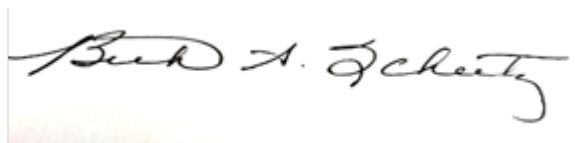
The third period is from March 14 through March 20, 2021. During this time the claimant was earning wages from another employer. He cannot be considered totally or temporarily unemployed. The issue becomes whether he was partially unemployed. For a worker to be partially unemployed, he must be earning less than his WBA plus \$15.00. For that week, the claimant earned \$70.00. This was less than \$112.00, his WBA plus \$15.00. The claimant was partially unemployed for the week ending March 20, 2021.

The claimant filed claims from November 29, 2020, through December 19, 2020, and from February 28, 2021, through March 13, 2021. For each of these weeks, the claimant earned at least \$112.00, if not \$350.00, and cannot be considered unemployed. Benefits are denied for those weeks.

DECISION:

The representative's January 22, 2021, decision (reference 03) is modified in favor of the appellant. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits except for the two weeks ending January 1, 2021, when he was temporarily unemployed and the one week ending March 20, 2021, when he was partially unemployed. Benefits are allowed for those three weeks, provided the claimant is otherwise eligible. .

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, but who are currently unemployed for reasons related to COVID-19 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>.



Beth A. Scheetz
Administrative Law Judge

April 2, 2021
Decision Dated and Mailed

bas/scn