

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

AMANDA BURNS

Claimant

APPEAL NO. 23A-UI-01618-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADAMS DOOR INC OF CEDAR RAPIDS

Employer

OC: 04/19/20

Claimant: Respondent (4R)

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

STATEMENT OF THE CASE:

On February 14, 2023, the employer filed a timely appeal from the February 10, 2023 (reference 03) decision that allowed benefits to the claimant effective April 19, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was commenced on March 3, 2023 and concluded on March 21, 2023. Amanda Burns (claimant) participated. Athena Lance represented the employer and presented additional testimony through Jim Lance. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI01619-JT-T. Claimant Exhibits 1 through 13 and employer Exhibits A and B were received into evidence. The employer's additional proposed exhibits, submitted at 6:08 p.m. on March 20, 2023 and not served on the claimant, were not received into evidence due to the untimely submission and the employer's failure to serve the proposed exhibits on the claimant pursuant to the hearing notice instructions. The administrative law judge took official notice of Iowa Workforce Development administrative records labeled D-1 through D-12 for identification purposes.

ISSUES:

Whether the claimant was able to work and available for work during the period beginning April 19, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period beginning April 19, 2020.

Whether the employer's account may be charged for benefits for the period beginning April 19, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The present decision addresses the period of consecutive weekly claims between April 19, 2020 and September 26, 2020. The administrative law judge notes the decision from which the employer appealed addressed the period beginning April 19, 2020. The administrative law

judge determines it is appropriate to forego a ruling regarding the able and available and temporary/partial unemployment issues pertaining to the “additional claim” period that began November 29, 2020 in the absence of a Benefits Bureau decision regarding those issues for that period.

Amanda Burns (claimant) established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set the weekly benefit amount at \$286.00. The claimant's unemployment insurance claim occurred in the context of the COVID-19 pandemic and in response to the claimant's employer. Adams Door Inc. of Cedar Rapids, encouraging the claimant to file for unemployment insurance benefits.

Adams Door Inc. of Cedar Rapids was the sole base period employer and continued to be the claimant's sole employer throughout the relevant period. The claimant worked for the employer as a part-time office worker. The claimant's wage at the time she established her unemployment insurance claim was \$14.00 an hour.

The base period consists of the four quarters of 2019. The claimant's 2019 quarterly wages were as follows: \$4,890.42 (first quarter), \$6,009.63 (second quarter), \$5,855.50 (third quarter), and \$5,950.00 (fourth quarter). Given the \$14.00 hourly wage, the base period wages translate to average weekly wages and average weekly hours as follows:

Quarter	Weekly Wages (average)	Weekly hours (average)
1	\$376.19	26.87
2	\$462.28	33.02
3	\$450.42	32.17
4	\$457.69	32.69

Once the claimant established the original claim for benefits, she made consecutive weekly claims through the week that ended September 26, 2020. The claimant then discontinued her claim for benefits.

The claimant's weekly work hours and wages during the relevant period were as follows:

Week End Date	Hours Worked	Wages	Claimant-Reported Wages
4/25/20	0	0	0
5/2/20	0	0	0
5/9/20	0	0	0
5/16/20	0	0	0
5/23/20	8	112.00	80.00
5/30/20	12.45	174.30	165.00
6/6/20	19	266.00	244.00
6/13/20	11.15	156.10	145.00
6/20/20	20	280.00	257.00
6/27/20	16.15	226.10	210.00
7/4/20	20.3	284.20	332.00
7/11/20	20.15	282.10	259.00
7/18/20	14.45	202.30	191.00
7/25/20	23	322.00	302.00
8/1/20	20.45	286.30	275.00
8/8/20	21	294.00	275.00
8/15/20	0	0	0
8/22/20	24.3	340.20	319.00

8/29/20	30.15	422.10	383.00
9/5/20	28.30	396.20	383.00
9/12/20	30.15	422.10	365.00
9/19/20	31.5	441.00	397.00
9/26/20	6.3	88.20	87.00

The claimant was completely off work during the four-week period of April 19, 2020 through May 16, 2020. Almost three years after the start of the benefit year in question, the parties dispute the basis for the claimant being off work during the initial four-weeks of the claimant and the subsequent period. The employer asserts it was an “essential business” and, therefore, did not close its doors during the pandemic. However, the weight of the evidence indicates the employer prioritized giving work hours to another, full-time office worker and reduced the hours the employer had available to the claimant. During the week that ended April 25, 2020, the claimant was ill and unable to work. The claimant was well enough for work and available to return to work effective April 26, 2020, but the employer did not have work for her at that time. The employer continued to not have work for the claimant through the week that ended May 16, 2020. The claimant returned to work during the week that ended May 23, 2020, but the employer did not have her regular, pre-pandemic hours available at that time. The number of hours the employer had available to the claimant varied from week to week. After the August 10, 2020 derecho, demand for the employer’s services significantly increased and the employer began to have an increased number of work hours for the claimant. The claimant remained available for work and worked the hours the employer made available, with the exception of the weeks ending August 15, 2020, which was the week of the derecho, and September 26, 2020, when the claimant only made herself available for 6.3 hours of work.

The claimant’s weekly work hours and wages during the relevant period were as follows:

<u>Week End Date</u>	<u>Hours Worked</u>	<u>Wages</u>	<u>Claimant-Reported Wages</u>
4/25/20	0	0	0
5/2/20	0	0	0
5/9/20	0	0	0
5/16/20	0	0	0
5/23/20	8	112.00	80.00
5/30/20	12.45	174.30	165.00
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7/4/20	20.3	284.20	332.00
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7/18/20	14.45	202.30	191.00
7/25/20	23	322.00	302.00
8/1/20	20.45	286.30	275.00
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8/22/20	24.3	340.20	319.00
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9/12/20	30.15	422.10	365.00
9/19/20	31.5	441.00	397.00
9/26/20	6.3	88.20	87.00

At the time the claimant established the April 19, 2020 original claim, Iowa Workforce Development had implemented a decision to temporarily waive charges to employer's accounts in light of the economic impact of the Covid-19 pandemic. This waiver of charges took effective April 1, 2020 and expired with the benefit week that ended September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. 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 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(1) and (29) 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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

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).

The evidence in the record establishes the claimant was ill and unavailable for work during the week that ended April 25, 2020. The claimant is not eligible for regular benefits for that week.

The evidence establishes the claimant was able to work, available for work, but temporarily laid off during the three weeks between April 26, 2020 and May 16, 2020. The claimant is eligible for benefits for those three weeks, provided the claimant met all other eligibility requirements.

The claimant was able to work, available for work, but partially unemployed during the weeks that ended May 23, 2020 through the week that ended June 27, 2020, during the weeks that ended July 11, 2020 and July 18, 2020, and during the weeks that ended August 1, 2020 and August 8, 2020. The claimant is eligible for benefits for those weeks, provided she meets all other eligibility requirements.

During the weeks that ended July 4, 2020, July 25, 2020, and the weeks ending August 22, 2020 through September 19, 2020, the claimant was able to work, available for work, but earned wages that exceeded the \$286.00 weekly benefit amount by more than \$15.00. The claimant cannot be deemed partially unemployed during those weeks and is not eligible for benefits for those weeks.

The claimant was not available for work during the week that ended August 15, 2020 and is not eligible for benefits for that week.

The claimant was not available for work for the majority of the week that ended September 26, 2020 and is not eligible for benefits for that week.

In light of the IWD policy of not charging employer accounts for benefits for the period of April 1, 2020 through September 5, 2020, the employer's account will not be charged for benefits for weeks included in that period.

DECISION:

The February 10, 2023 (reference 03) decision is MODIFIED in favor of the employer/appellant as follows.

The claimant was ill and unavailable for work during the week that ended April 25, 2020. The claimant is not eligible for regular benefits for that week.

The claimant was able to work, available for work, but temporarily laid off during the three weeks between April 26, 2020 and May 16, 2020. The claimant is eligible for benefits for those three weeks, provided the claimant met all other eligibility requirements.

The claimant was able to work, available for work, but partially unemployed during the weeks that ended May 23, 2020 through the week that ended June 27, 2020, during the weeks that ended July 11, 2020 and July 18, 2020, and during the weeks that ended August 1, 2020 and August 8, 2020. The claimant is eligible for benefits for those weeks, provided she meets all other eligibility requirements.

During the weeks that ended July 4, 2020, July 25, 2020, and the weeks ending August 22, 2020 through September 19, 2020, the claimant was able to work, available for work, but earned wages that exceeded the \$286.00 weekly benefit amount by more than \$15.00. The claimant cannot be deemed partially unemployed during those weeks and is not eligible for benefits for those weeks.

The claimant was not available for work during the week that ended August 15, 2020 and is not eligible for benefits for that week.

The claimant was not available for work for the majority of the week that ended September 26, 2020 and is not eligible for benefits for that week.

In light of the IWD policy of not charging employer accounts for benefits for the period of April 1, 2020 through September 5, 2020, the employer's account will not be charged for benefits for weeks included in that period.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for an initial determination of the able and available, and temporary and partial unemployment issues pertaining to the additional claim period beginning November 29, 2020.



James E. Timberland
Administrative Law Judge

March 31, 2023
Decision Dated and Mailed

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NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits for one or more weeks. If you disagree with this decision, you may file an appeal by following the instructions on the last page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020 and June 12, 2021 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> and by contacting IWD customer service at 866-239-0843. If this decision becomes final or if you are not eligible for PUA, for the affected period, you may have an overpayment of benefits.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.