

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF L GLADSON
Claimant

PELLA CORPORATION
Employer

APPEAL 24A-UI-01274-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/22
Claimant: Appellant (4)

Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant, Jeff L. Gladson, filed an appeal from the January 22, 2024 (reference 01) unemployment insurance decision that denied benefits effective December 17, 2023, reasoning he was receiving the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2024, at 8:00 a.m. The claimant participated. The employer participated through Human Resources Manager Amber Kelley. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed?
Whether claimant is able to and available for work?
Whether claimant is still employed at the same hours and wages?
Whether employer's account is subject to charge?

FINDINGS OF FACT:

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

The claimant began employment with the employer, Pella Corporation, as a full-time raw wood processor on May 3, 2004. The claimant worked a regular schedule from 7:00 a.m. to 3:10 p.m. Monday through Friday. The claimant's regular full-time schedule is 40 hours per week. His hourly rate was \$27.25 per hour.

The claimant filed a continuing claim for the week ending December 30, 2023. His weekly benefit amount on the claim is \$582.00.

The employer had a shutdown period for the week ending December 30, 2023. A couple of weeks before the shutdown, the claimant approached his supervisor and asked if there would be work in other areas of the plant. The claimant was told there was no other work in other

areas. The claimant received eight hours of holiday pay or \$218.00 for December 25, 2023. The administrative records show the claimant did not report these earnings on his continuing claim for the week.

The claimant made a continuing claim for the week ending January 6, 2024. The claimant returned to work on January 2, 2024. After returning he worked his existing schedule.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was temporarily unemployed for the week ending December 30, 2023. He was also able and available. Benefits are granted for the week ending December 30, 2023, provided he is otherwise eligible for benefits. Benefits are denied for the week ending January 6, 2024 because the claimant was not unemployed for that week.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Specifically, I do not find the employer's allegation credible that there was work in another area of the plant and the claimant did not ask for work.

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.

The claimant was partially unemployed for the week ending December 30, 2023. The claimant received eight hours of holiday pay totaling \$218.00. The claimant is still eligible because this does not exceed his weekly benefit amount of \$582.00 plus \$15.00.

The claimant returned to work on January 2, 2024. In addition to the holiday pay for New Year's Day, the claimant received his full-time pay for this week. Therefore, he is not eligible for the week ending January 6, 2024.

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".

The claimant asked if there was work in another area of the plant two weeks prior to the scheduled shutdown the week ending December 30, 2023. His supervisor informed him that there was not work available.

Iowa Admin. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

This rule is not applicable because the claimant ordinarily works full-time hours. Furthermore, the claimant's full-time schedule was disrupted the week ending December 30, 2023.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

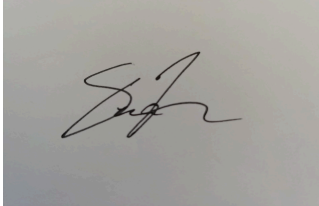
(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

This employer shall be charged for the benefits paid because the claimant was not enjoying the same hours and wages as contemplated in his contract for hire for the week ending December 30, 2023.

DECISION:

The January 22, 2024 (reference 01) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant is eligible to receive benefits for the week ending December 30, 2023. The claimant is not eligible for the week ending January 6, 2024, because he worked his full-time schedule that week accounting for the holiday pay.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

February 27, 2024
Decision Dated and Mailed

smn/scn

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.