

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

DEANDRE L DENWOOD
Claimant

IOWA STAFFING INC
Employer

APPEAL NO. 22A-UI-14531-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/29/22
Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On June 28, 2022, the employer filed a timely appeal from the June 21, 2022 (reference 01) decision that allowed benefits to the claimant for the period beginning May 29, 2022, provided the claimant was otherwise eligible, based on the deputy's conclusion the claimant was able to work, available for work, but temporarily laid off from employment with Iowa Staffing, Inc. After due notice was issued, a hearing was held on August 8, 2022. Deandre Denwood (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Alejandra Rocha, Office Manager, represented the employer. Exhibits 1 through 8, the materials contained in the appeal packet, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning May 29, 2022.

Whether the claimant was partially and/or temporarily unemployed for the period beginning May 29, 2022.

Whether the employer's account may be charged for benefits for the period beginning May 29, 2022.

FINDINGS OF FACT:

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

Iowa Staffing, Inc. is a temporary employment agency. The claimant has at all relevant times been employed by Iowa Staffing, Inc. Monday, May 30, 2022 was the Memorial Day holiday. On Tuesday, May 31, 2022, the claimant completed a full-time, temporary work assignment. The claimant's wages for work performed on May 31, 2022 totaled \$8.50. These were the only wages the claimant earned for the week that ended June 4, 2022. The claimant was ready, willing and able to work that week, but the employer did not have other work for the claimant that week. On Wednesday, June 1, 2022, the employer contacted the claimant about a new full-time temporary work assignment. The claimant responded that same day. On Thursday,

June 2, 2022, the claimant and the employer met to discuss the proposed new assignment, which was to start on Monday, June 6, 2022. On June 2, 2022, the parties signed documentation concerning the new full-time temporary work assignment. On June 6, 2022, the claimant began the new full-time temporary work assignment and continues in the assignment.

During the week of May 29, 2022 through June 4, 2022, the claimant established an original claim for benefits that Iowa Workforce Development deemed effective May 29, 2022. Iowa Staffing, Inc. is a base period employer. After the claimant set up the original claim, the claimant did not make weekly claims and has not received benefits in connection with the claim.

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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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).

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant was able to work, available for work, but partially unemployed during the work that ended June 4, 2022. If the claimant had made a weekly claim for that week, the claimant would have been eligible for benefits, provided he met all other eligibility requirements, and the employer's would have been subject to charge for that one week. However, because the claimant did not make a weekly claim for the week ending June 4, 2022, the claimant cannot be considered for benefits for that week and the employer's account has not been charged. The claimant has been employed full-time since the week that started June 5, 2022 and therefore, would not meet the unemployment insurance "availability" requirement for that period. Because the claimant has made no weekly claims, the able and available issues are moot for the time between May 29, 2022 and the August 8, 2022 appeal hearing date. In the event the claimant reactivates the claim at some future point, the claimant's ability to work, availability for work, partial and/or temporary unemployment for that future period will be considered anew.

DECISION:

The June 21, 2022 (reference 01) decision is MODIFIED IN FAVOR OF THE EMPLOYER/APPELLANT as follows. During the week that ended June 4, 2022, the claimant was able to work, available for work, but partially unemployed. However, because the claimant did not make a weekly claim for the week ending June 4, 2022, the claimant cannot be considered for benefits for that week and the employer's account has not been charged for benefits for that week. Effective the benefit week that started June 5, 2022, the claimant was again employed full-time, was not unemployed and, therefore, was not eligible for benefits.

In the event the claimant reactivates the claim at some future point, the claimant's ability to work, availability for work, partial and/or temporary unemployment for that future period will be considered anew.



James E. Timberland
Administrative Law Judge

September 27, 2022
Decision Dated and Mailed

jet/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
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 adquiera 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.