

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASON D ROEDING
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 21A-UI-02775-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 23, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 10, 2021. Claimant participated personally. Employer participated by Lori DiRenzo.

ISSUES:

Whether claimant is still employed at the same hours and wages?
Whether claimant is eligible to receive partial benefits?
Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant worked for Tyson as a full time employee until December 2020. While claimant worked for employer, he was out for an extended period for an injury that was not work-related. Claimant had a release to return to work on October 19, 2021.

Employer requested that claimant return on October 21, 2020. Claimant was asked to do a company Covid test before return. He tested positive for Covid. Claimant did not believe he had Covid, and immediately went to a Test Iowa Site with his family. All members tested negative. Claimant took this negative test-from the same day he'd tested positive with employer – and asked to work. Employer stated that they accept no tests but their own and told claimant he could not work until October 31, 2020.

At all times from October 19 through October 31, 2020 claimant was able and available to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period between October 19 and 31, 2020.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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.

Because the claimant was able and available to work from the dates of October 19 -31, 2020, benefits are allowed for that period.

DECISION:

The December 23, 2020, reference 01, decision is affirmed. The claimant is partially unemployed for the period October 19-31, 2020 and benefits are allowed, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

March 15, 2021
Decision Dated and Mailed

bab/mh