

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

K TOMETY

Claimant

APPEAL NO. 20A-UI-10433-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 03/29/20

Claimant: Respondent (3R)

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 § 96.19(38) – Total and Partial Unemployment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 20, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on October 13, 2020. Claimant participated personally. Employer participated by Paige Fiedler. Interpretive services were provided by CTS Language Link.

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?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The claimant currently works for Team Staffing Solutions, a base period employer, under the same terms and conditions as contemplated in the original contract of hire. Claimant's only placement has been with Wilton Precision Steel as a full time worker. Wilton Precision Steel placed clients on leave for a period between March 27, 2020 and May 23, 2020. During the period between March 27 and April 19, 2020 claimant was not paid by employer. From April 19, 2020 through May 23, 2020 claimant was paid his normal full time wages from employer. After that date, claimant worked a minimum of 32 hours most weeks, but in many weeks he did not

work 40 hours per week. Claimant continued to claim unemployment benefits throughout this time.

Claimant has received state unemployment benefits of \$5,654.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits of \$7,500.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is unemployed for the period between March 27, 2020 through April 19, 2020. For the times after April 19, the weeks need to be parsed out. For the weeks between April 20-May 23, claimant was paid his full time wages. For the majority of the weeks, claimant worked less than the normal 40 hours and received less than his weekly benefit amount. For the week ending July 18, 2020, claimant did not work.

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.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

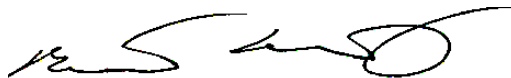
At all times relevant, claimant was able and available for work. The claimant was fully unemployed for the period between March 27, 2020 through April 19, 2020. For the weeks between April 20-May 23, claimant was paid his full time wages and not entitled to benefits. For the majority of the weeks after May 23, 2020, claimant worked less than his normal 40 hours and received less than his weekly benefit amount. For the week ending July 18, 2020, claimant did not work. Benefits are allowed for weeks when claimant worked less than his regular hours and received less than his weekly benefit amount.

This matter will be remanded to the benefits bureau to determine overpayments of state and federal benefits in accordance with this decision.

DECISION:

The August 20, 2020, reference 01, decision is modified in favor of the employer, as claimant is not eligible to receive all the weeks' benefits he has received.

This matter is remanded to the benefits bureau for determinations of overpayment amounts in accordance with this decision.



Blair A. Bennett
Administrative Law Judge

October 15, 2020
Decision Dated and Mailed

bab/scn