

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LONDON A DAVIS**  
Claimant

**WORKSOURCE INC**  
Employer

**APPEAL 20A-UI-01435-S1-T**

**AMENDED  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/17/19  
Claimant: Respondent (2)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Worksource (employer) appealed a representative's February 11, 2020, decision (reference 07) that concluded London Davis (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Blake Costello, Branch Manager, and Jessica Swift, Account Manager.

**ISSUE:**

The issue is whether the claimant was eligible to receive unemployment insurance benefits as of January 26, 2020.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a staffing agency. The claimant was hired on November 15, 2019, as a full-time temporary janitor assigned to work at Data Clean. The claimant opened a claim for unemployment insurance benefits with an effective date of November 17, 2019, but did not file a weekly claim. On December 22, 2019, the claimant reopened her claim but did not file a weekly claim.

The employer timely responded to the notice of claim on February 6, 2020. It certified that the claimant was on temporary lay-off from January 20, 2020 to January 30, 2020. The claimant's weekly benefit amount was \$160.00. The claimant did not file any weekly claims for that period.

On February 16, 2020, the claimant filed an additional claim for benefits and filed a weekly claim. From February 17 to February 21, 2020, there was no work available for the claimant.

She reported \$520.00 in wages for the week ending February 22, 2020. No unemployment insurance benefits were issued for that week.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the issues are moot.

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 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

In order to be eligible for weekly benefits, the claimant must file an online web application continued claim. Iowa Admin. Code r. 871-24.2(1)g. The law no longer allows for an administrative law judge to grant retroactive benefits provided the claimant demonstrates good cause. Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

The claimant did not file weekly claims for benefits from January 26 to February 15, 2020, and missed the opportunity to seek benefits for the four-week period ending February 15, 2020. Therefore, there is no live case or controversy before the Appeals Bureau for that time period. The issue of whether the claimant was available for that period is not relevant because no benefits were sought for those weeks. The issue of whether the claimant was available during the four-week period ending February 15, 2020, is moot.

The next matter is whether the claimant was able and available for work for the week ending February 22, 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".

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(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.

Here the employer did not have work available for the employer during the week ending February 22, 2020, but the claimant reported income during that week. The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the hearing to provide evidence of availability for work during the benefit week ending February 22, 2020. Without proof of being able and available, the claimant is deemed to be ineligible for unemployment insurance benefits for the week ending February 22, 2020.

**DECISION:**

The representative's February 11, 2020, decision (reference 07) is reversed. The issue of whether the claimant was available for work during the four-week period ending February 15, 2020, is moot. The claimant was not able and available for work for the week ending February 22, 2020. Benefits are denied as of January 26, 2020.



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Beth A. Scheetz  
Administrative Law Judge

March 20, 2020  
Decision Dated and Mailed

bas/scn