

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES E CLARK
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-05384-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/13/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment S

STATEMENT OF THE CASE:

The claimant, Charles E. Clark, filed an appeal to July 3, 2019 (reference 04) initial decision which denied benefits, concluding he was working the same hours/wages for which he was hired and not partially unemployed. Benefits were denied effective June 16, 2019.

After proper notice, a telephone hearing was conducted on July 30, 2019. The claimant participated personally. The employer was represented by Trenton Kilpatrick, hearing representative for Corporate Cost Control. Nancy Richardson, human resources manager, testified for the employer. The administrative law judge took official notice of the administrative records including the claim for benefits and wage history. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work?
Is the claimant eligible to receive partial unemployment insurance benefits?
Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked full-time for J.O. Trucking Inc., and has worked part-time for this employer, Hy-Vee Inc. as a floral delivery person. The claimant has since separated from his full-time employment and continues to work every Friday for Hy-Vee, plus additional hours when offered. He is not looking for other employment, or full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is ineligible for benefits.

Iowa Code section 96.19(38) provides:

Definitions.

38. 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 Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

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 Admin. Code r. 871-24.23 provides, in relevant part:

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.

A claimant is only eligible for benefits if he or she is totally, partially, or temporarily unemployed. A claimant is totally unemployed if he or she does not earn any wages in any given week. Iowa Code § 96.19(38)a. A claimant is partially unemployed if after being separated from full-time employment, earns at odd jobs less than his or her weekly benefit amount plus fifteen dollars. Iowa Code § 96.19(38)b(2).

However, for an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The claimant here is not conducting work searches and seeking new full-time employment. The claimant in this case is not actively seeking work and therefore does not meet the eligibility requirements. Benefits are denied beginning June 16, 2019.

DECISION:

The July 3, 2019 (reference 04) initial decision is affirmed. The claimant is ineligible for benefits effective June 16, 2019, because he is not able to work, available for work, and earnestly and actively seeking work, as required. Benefits are denied effective June 16, 2019.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn