

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA PALAS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-06693-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/26/21
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available- Work Searches
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

On March 18, 2022, the claimant/appellant filed an appeal from the March 10, 2022, (reference 01) unemployment insurance decision that concluded the claimant was no longer temporarily unemployed and that he must engage in re-employment services including work searches. A telephone hearing was held on April 25, 2022. No hearing was scheduled or held as there was sufficient evidence in the administrative record, appeal letter, and accompanying documents to resolve the matter without testimony.

ISSUES:

- I. Is the claimant able to work and available for work?
- II. Does the claimant meet the definition of being considered partially, totally, or temporarily unemployed?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits with an effective date of November 26, 2021. The claimant is employed by K & W Coating, LLC, as a painter. The employer shuts down each winter and resumes work in early spring when the weather permits. Claimant is on a seasonal lay-off and remains attached to the employer. The claimant claimed benefits for the benefit week ending January 1, 2022, through March 26, 2022. The claimant's group code was reclassified as a 6 on early March 9, 2022. The claimant has returned to work for the employer as of March 26, 2022.

REASONING AND CONCLUSIONS OF LAW:

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. 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 Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

The claimant's employer engages in seasonal work that is weather dependent and the claimant is employed as a painter. The claimant is exempt from the work search warning if she is temporarily unemployed and on a temporary layoff. Under Iowa law a temporary layoff cannot exceed four weeks unless it is due to seasonal weather conditions that impact the ability to perform work.

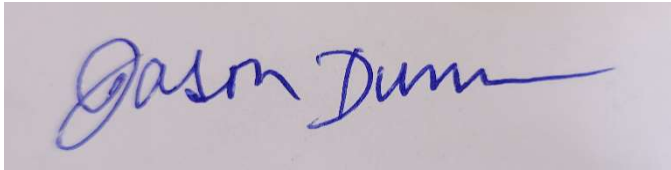
The claimant was on a temporary seasonal lay-off and remained attached to her employer who she has continued to work for when the employer recalled its staff in March. The claimant was on a temporary lay-off during this claim year and his group code should have remained a 3 and he is exempt from engaging in re-employment services including work searches.

DECISION:

The March 10, 2022, reference 01, decision is reversed. The decision advising claimant that she is no longer considered temporarily laid off and that she must conduct at least four reemployment activities each week benefits was issued in error and the claimant is exempt from the work search requirement. Claimant remained temporarily unemployed up and until the benefit week ending March 26, 2022, when she returned to work for his employer.

REMAND:

The issue of the claimant's group code classification is remanded to the Benefits Bureau for review and reclassification to a Group Code 3 based on her employment as a painter.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 5, 2022

Decision Dated and Mailed

jd/ac