

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT S DOWD
Claimant

APPEAL 20A-UI-12165-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**
EMPLOYER

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial and Temporary Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 23, 2020 (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective March 29, 2020 finding that the claimant was working the same hours and earning the same wages as in his original contract of hire. After due notice was issued, a telephone hearing was held on November 30, 2020. The claimant participated personally. Chrisanne Dowd participated as a witness for the claimant. The employer, Prairie Meadows Racetrack & Casino, participated through witness Pam Anderson. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant eligible for total or partial unemployment benefits?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant worked for this employer full-time as a seasonal security officer. The horseracing season typically runs from April 1st until the middle of October. This year, due to the COVID 19 pandemic, the claimant was unable to start his position with this employer until June 1, 2020. He was found eligible for Federal Pandemic Unemployment Assistance (PUA) benefits effective April 5, 2020.

Claimant's last day physically working for the employer this year was October 17, 2020. Claimant has not been searching for work, rather, claimant intends to return to this employer for the next 2021 season in April of 2021.

Claimant's administrative records establish that he filed his original claim for unemployment insurance benefits funded by the State of Iowa effective March 29, 2020. He filed an additional claim for regular unemployment insurance benefits funded by the State of Iowa effective October 18, 2020. The claimant's administrative records establish that he is currently coded as

a Group Code 3. The issue changing the claimant to a correct group code is remanded to the Benefits Bureau for an initial investigation as the claimant is no longer temporarily unemployed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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.

(emphasis added).

In this case, the claimant was not employed with this employer until June 1, 2020. From June 1, 2020 through October 17, 2020, he was employed at the same hours and same wages as in his

original contract of hire. Claimant was laid off due to lack of work effective October 17, 2020; however, his layoff exceeds four weeks pursuant to Iowa Code § 96.19(38)c. Once his temporary layoff expired, the claimant was required to be able to and available for work, as well as actively and earnestly seeking work. Claimant credibly testified that he has been waiting to return to this employer in April of 2021 and has not been actively seeking employment.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

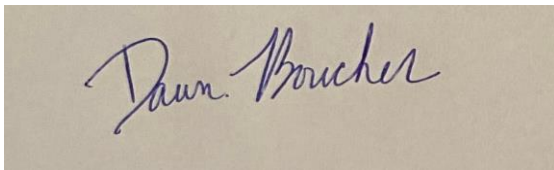
As such, the claimant is eligible for temporary unemployment insurance benefits funded by the State of Iowa from October 18, 2020 through November 14, 2020 as the claimant was on a temporary layoff during that four-week period of time. Effective November 15, 2020, the claimant was required to be available for work. Because he is waiting to be recalled to work for this employer and is not actively and earnestly seeking work, he is not considered available for work pursuant to Iowa Code § 96.4(3). Benefits are denied effective November 15, 2020 and continuing until the claimant establishes his availability for full-time employment.

DECISION:

The September 23, 2020 (reference 01) decision is modified in favor of the appellant. Claimant was temporarily unemployed from October 18, 2020 through November 14, 2020 from this employer due to lack of work. Effective November 15, 2020, the claimant has failed to establish that he is available for work. Regular unemployment insurance benefits are denied effective November 15, 2020 as the claimant is not available for work pursuant to Iowa Code § 96.4(3).

REMAND:

The issue of whether the claimant is properly coded in Group Code 3 is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

December 8, 2020
Decision Dated and Mailed

db/mh

Note to Claimant

This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus. **You will need to apply for PUA to determine your eligibility under the program.** For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>.

If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.