

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERONIMO AMIGON CASTILLO
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 24A-UI-00433-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/17/23
Claimant: Respondent (1)**

Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer, Remedy Intelligent Staffing Inc., filed an appeal from the January 4, 2024 (reference 03) unemployment insurance decision that granted benefits effective December 17, 2023, reasoning he was able and available on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on January 30, 2024, at 10:00 a.m. The claimant did not participate. The employer participated through Branch Manager Dawn Starr. Official notice was taken of the administrative record. Exhibits 1, 2, and 3 were received into the record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed?

Whether claimant is able to and available for work?

Whether claimant is still employed at the same hours and wages?

Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer as a full-time field associate on March 13, 2023, at the site employer, General Mills. The claimant worked from 6:15 a.m. to 2:15 p.m. Monday through Friday on the first shift. His hourly rate was \$15.50 during the week.

On December 17, 2023, General Mills shut down for the holiday season until January 3, 2024. The assignment with this employer did not end. Prior to the shutdown, Ms. Starr alerted the claimant that he could work at Oral B, another site employer, during the shutdown. The rate of

pay for this role was also \$15.50. This was on the first shift there from 7:00 a.m. to 3:00 p.m. Monday through Friday.

The claimant filed an original claim for benefits on December 17, 2023. His weekly benefit amount on this claim is \$417.00. He did not earn any wages for the weeks ending December 23, 2023, and December 30, 2023.

The claimant earned \$350.00 for the week ending January 6, 2024.

On January 27, 2023, General Mills shut down another time. The assignment with this employer did not end. Prior to this shutdown, Ms. Starr reminded the claimant about the position at Oral B. The claimant rejected this placement. He wanted to stay at General Mills.

The claimant did not earn any wages for the week ending January 27, 2024.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was on a short-term layoff and able and available effective December 17, 2023. Benefits are granted, provided the claimant is otherwise eligible.

The administrative law judge rejects at the outset that the claimant was essentially required to accept work with other employers at other locations to remain able and available. Ms. Iowa Code 96.5(1)j only applies in the context of separations. Essentially, Ms. Starr is arguing that the claimant was not available for work under Iowa Admin. Code r. 871-24.22(2)i(3), which states:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. **The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.**

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing oncall work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely oncall work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work. [Emphasis added]

The administrative law judge disagrees that the claimant was rendered unavailable for work simply because she refused to work at another location. That is because the claimant was still attached to the site employer because Ms. Starr acknowledged that assignment had not ended. Given the assignment did not end, the claimant was entitled to remain with that 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. [Emphasis added.]

Iowa Code section 96.4(3)a 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".**

The administrative law judge follows this analysis to Iowa Code section 96.1A(37). Ms. Starr's application does not follow the straightforward meaning of Iowa Code section 96.1A(37)(2)(c) which states that an employee is temporarily unemployed if their employment has been “although temporarily suspended has not been terminated.” If an employee is deemed temporarily unemployed, they are not required to do job searches, let alone entertain offers of work. The administrative law judge finds the claimant was temporarily unemployed with this site employer for the weeks ending December 23, 2023, December 30, 2023, and January 27, 2024.

The claimant earned \$350.00 for the week ending January 6, 2024. The claimant remains eligible for that week because he did not earn more than her weekly benefit amount \$419.00 plus \$15.00.

Iowa Admin. R. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

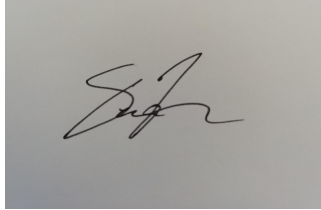
(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was a full-time employee at this site employer. The employer shut down due to a seasonal layoff. As a result, Iowa Admin. Code r. 871-24.23(26) does not apply. The claimant was able and available effective December 17, 2023. Benefits are granted, provided the claimant is otherwise eligible for benefits.

DECISION:

The January 4, 2024 (reference 03) unemployment insurance decision is AFFIRMED. The claimant was able and available for work effective December 17, 2023. Benefits are granted, provided he is otherwise eligible for benefits.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II

February 1, 2024
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.