

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY F JACKSON
Claimant

PEOPLEREADY INC
Employer

APPEAL 19A-UI-09625-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/18/19
Claimant: Respondent (2)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary 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:

On December 5, 2019, PeopleReady, Inc. (employer) filed an appeal from the November 25, 2019, reference 08, unemployment insurance decision that allowed benefits effective November 3, 2019 based upon the determination Rodney F. Jackson (claimant) was employed part-time and available for his regular hours of work. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2020 and consolidated with the hearing for appeal 19A-UI-09951-SC-T. The claimant participated personally. The employer participated through Mike Lierman, Branch Manager. The Employer's Exhibits 1 and 2 were admitted over the claimant's objections of relevance and foundation.

ISSUES:

Is the claimant partially unemployed effective November 3, 2019?
Is the claimant available for work effective November 3, 2019?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on December 20, 2017. He has only ever worked for the employer's client Salvation Army during the winter holiday season as a bell ringer. He was most recently assigned to this job on November 9, 2019 and his last day was November 11, 2019. The assignment offers employees up to forty hours a week. However, the employees are not assigned a permanent work location. They contact the employer every morning to determine where they will be assigned and, if an employee does not contact the employer, the only penalty is that they do not work that day.

The claimant worked eight hours on November 9. The employer received reports that the claimant was lying or sleeping on a bench during his shift. On November 11, the employer received additional reports of the claimant lying on a bench and the client asked that the

claimant be removed from the assignment. Another employee met the claimant at the end of his shift where she found him lying on a bench. She notified him of the end of the assignment and collected his bell and smock. On November 14, the claimant contacted the employer and asked to return to the assignment. The employer told him he was not allowed to return to that assignment and did not offer him any other assignments.

The claimant filed his original claim for benefits effective August 18, 2019 and his weekly benefit amount is \$163.00. The claimant's base period starts April 1, 2018 and ends on March 31, 2019. He had six employers during that time, including the employer, and worked part-time for all of them. The claimant reactivated his claim for benefits effective November 3, 2019. He filed a weekly claim for benefits for the weeks ending November 9 and November 16. The claimant reported \$80.00 in wages for the week ending November 9. He did not report any wages earned during the week ending November 16, even though he earned \$80.00 on November 11.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not partially or totally unemployed from November 3 through November 16, 2019. The issues availability for work and the chargeability of the employer's account for those two weeks are moot. Benefits are denied.

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", 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 § 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 Admin. Code 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages during the weeks ending November 9 and November 16. He was not totally unemployed.

The next question is whether he was partially unemployed during that time. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant has worked part-time hours during his entire employment. The claimant's hours fluctuate at his discretion as was the expectation when he was hired. As the claimant worked the two-week period ending November 16 in the same manner contemplated at hire, he was not partially unemployed and is not eligible for benefits for the two-week period.

As the claimant was not partially unemployed from November 3 through November 16, the issues of his availability for work and the chargeability of the employer's account for those two weeks are moot.

DECISION:

The November 25, 2019, reference 08, unemployment insurance decision is reversed. The claimant was not partially unemployed and benefits are denied from November 3 through November 16, 2019. The issues of availability for work and the chargeability of the employer's account for those two weeks are moot.

A handwritten signature in dark ink, reading "Stephanie R Callahan" with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

January 13, 2020
Decision Dated and Mailed

src/scn