

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON D VAN ARKEL
Claimant

O-TOWN COMMUNICATIONS INC
Employer

APPEAL 21A-UI-07355-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1R)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Jason D Van Arkel, the claimant/appellant, filed an appeal from the March 5, 2021, (reference 01) unemployment insurance decision that denied benefits as of May 17, 2020. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2021. Mr. Van Arkel participated and testified. The employer participated through Greg List, owner. Official notice was taken of the administrative record, including Mr. Van Arkel's appeal letter.

ISSUES:

Is Mr. Van Arkel partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Van Arkel began working for the employer on November 28, 2011. He worked as a full-time Sports Director until March 16, 2020. He was paid \$1,675.00 twice per month.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. On March 6, 2020, Mr. List told Mr. Van Arkel that due to budget issues and because of the pandemic, the employer would end his employment. Mr. Van Arkel offered to work part-time announcing Ottumwa High School games. Mr. List told Mr. Van Arkel that he would consider the offer. The parties eventually made an agreement and formalized their agreement in a document dated March 16, 2020.

The parties agreed that Mr. Van Arkel's employment with the employer as Sports Director would be terminated as of March 16, 2020 and that the employer would continue to pay Mr. Van Arkel \$1,675.00 twice per month through May 15, 2020. The issue of Mr. Van Arkel's separation from employment has not yet been investigated by the Benefits Bureau of Iowa Workforce Development.

The parties also agreed that when local sports resumed Mr. Van Arkel would be paid \$40.00 per game he announced and \$20.00 per game when the employer requested him to be a sports stringer. Mr. Van Arkel and Mr. List both signed the agreement. The agreement remains in effect through the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that, as of May 17, 2020, Mr. Van Arkel is employed in his part-time job with this employer at the same hours and wages as contemplated in the original contract for hire.

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.

Iowa Code section 96.7(2)a(2)(a) 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.

In this case, the original contract of hire is the March 16, 2020 agreement between Mr. Van Arkel and the employer. Mr. Van Arkel has continuously worked for the employer since his hire date under the same terms and conditions as contemplated at hire. The prior agreement wherein Mr. Van Arkel worked full-time as the employer's Sports Director was terminated on March 16, 2020. Since Mr. Van Arkel is still employed in his part-time job with this employer at the same hours and wages as contemplated in the original contract for hire, regular, state-funded unemployment insurance benefits are denied.

Even though Mr. Van Arkel is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during these time periods. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The March 5, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Van Arkel is still employed in his part-time job with this employer at the same hours and wages as contemplated in the original contract for hire. Benefits are denied.

REMAND:

The issue of Mr. Van Arkel's separation from employment with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 28, 2021
Decision Dated and Mailed

dz/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and you were or you are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **However, you can still apply for PUA benefits at the link above.**