

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDALL K TRIVELY
Claimant

MARK HUGHES CONSTRUCTION
Employer

APPEAL 20A-UI-14026-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment

STATEMENT OF THE CASE:

On November 4, 2020, Randall Trively (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 28, 2020 (reference 02) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages and therefore not partially unemployed.

A telephone hearing was held on January 6, 2021. The parties were properly notified of the hearing. Claimant participated personally. Mark Hughes Construction (employer/respondent) participated by owner Mark Hughes. Chris Donaldson participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the claimant still employed at the same hours and wages? 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:

Claimant began working for employer on or about March 29, 2019. Claimant's last day worked was August 7, 2020. Claimant worked for employer seven or eight times during that period. Claimant was employed in an on-call, as-needed basis. Employer contacted claimant several times in the latter part of 2020 to ask if he could work but he was not available to work. Claimant has not separated from this employment.

Around this time, claimant was working for another employer on an as-needed basis. Claimant last performed work for that employer in early July 2020. Claimant was contacted and offered work on July 14, 17, and 21, 2020. Claimant either did not respond to these offers of work or indicated he was unavailable to work those days. Around that time, claimant told that employer he was not interested in performing work for it unless he could earn at least \$1,000.00 per week. Claimant returned his keys and gas card to that employer around that time. That employer explained to claimant that it had never guaranteed him any specific shifts or income per week and could not do so moving forward. See 20A-UI-14025-AD-T.

Claimant subsequently began working full-time for another employer beginning around September 1, 2020. That position ended around November 10, 2020. Claimant has not worked elsewhere since. Claimant filed a claim for benefits each week from the benefit week ending July 18, 2020 and continuing through the benefit week ending September 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated October 28, 2020 (reference 02) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages and therefore not partially unemployed is **AFFIRMED**.

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. 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 section 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:

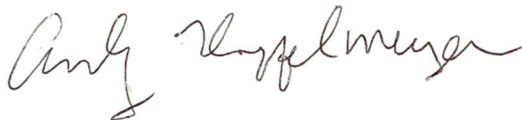
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

During the period in which claimant filed weekly claims for benefits he was still employed by employer on a part-time or as-needed basis, as contemplated in the original contract of hire. As such, claimant was not partially unemployed during that period and benefits must be denied. Because claimant is still employed by employer in the same way, employer's account is not subject to charge.

DECISION:

The decision dated October 28, 2020 (reference 02) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages and therefore not partially unemployed is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

January 27, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.