

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AARON KLEIN**  
Claimant

**CITY OF WATERLOO**  
Employer

**APPEAL 20A-UI-06568-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Aaron Klein (claimant) appealed a representative's June 11, 2020, decision (reference 01) that denied benefits based on his unwillingness to work with City of Waterloo (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 24, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 12, 2017, as a part-time coach and personal trainer. The claimant also worked for Key West Training. In March 2020, the claimant negotiated a new position at Key West Training. On March 2, 2020, the claimant and the employer negotiated new terms. As of March 16, 2020, the claimant was to become a part-time personal trainer. His duties coaching classes would stop.

On March 17, 2020, Governor Kim Reynolds closed all gyms. The claimant was laid off from his work with the employer and with Key West Training. The claimant returned to both jobs on May 18, 2020, when the governor allowed gyms to reopen.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. His weekly benefit amount was determined to be \$235.00. The claimant received benefits from March 15, 2020, to the week ending April 18, 2020, for a total of \$1,133.00 in state

unemployment insurance benefits after March 15, 2020. He also received \$1,800.00 in Federal Pandemic Unemployment Compensation for the three-week period ending April 18, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

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 Code section 96.4(3) provides:

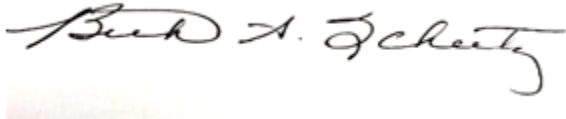
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

The claimant was separated from employment due to the governor's proclamation. He was totally unemployed. In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The June 11, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is able and available for work. Benefits are allowed as of March 15, 2020, provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

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

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July 31, 2020  
Decision Dated and Mailed

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