

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY L ROSS
Claimant

APPEAL 21R-UI-17644-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DINGUS TRANSPORT SERVICES INC
Employer

**OC: 01/24/21
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 18, 2021, (reference 01) unemployment insurance decision that denied benefits. Iowa Workforce Development mailed a notice of hearing to claimant's last address of record. The hearing was scheduled for June 7, 2021, at 1:00 p.m. The appellant registered a phone number with the Appeals Bureau as directed on the hearing notice, but was not available when called for the hearing. A voicemail was provided, directing the appellant to call the Appeals Bureau immediately to participate. A grace period was extended to allow the appellant to respond before the record was closed. No hearing was held. Claimant successfully requested reopening to the Employment Appeal Board (EAB) who remanded the matter for a new hearing.

After proper notice, a telephone hearing was conducted on October 1, 2021. Claimant participated personally. Employer participated through Jason Samples. Ashley Grinnell and Michelle Johnson also attended but did not testify. Official notice of the administrative records was taken. Employer Exhibits A-I were admitted.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed effective January 24, 2021?
Is the claimant able to and available for work?
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 was employed as a full-time over-the-road driver for this employer from April 9, 2018 until December 28, 2020. The issue of claimant's separation/requalification has not yet been addressed by the Benefits Bureau.

Claimant established his claim effective January 24, 2021 and made weekly continued claims each week through May 15, 2021. During this time, he was totally unemployed, actively searching for work and able and available for work. He did not refuse any offers of work. Claimant began new employment effective May 16, 2021 at Fuzzy Trucking in Durham, Missouri.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective January 24, 2021 through May 15, 2021.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 96.1A, subsection 38, paragraph "b", subparagraph (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".

Claimant in this case was totally unemployed for the period of December 28, 2020 until May 16, 2021. For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Claimant has presented sufficient evidence to establish he was able to and available for work effective January 24, 2021 and therefore is eligible for benefits, provided he meets all other requirements.

Because claimant had separated from employment with this employer (December 28, 2020) prior to establishing his claim for benefits, the issue of whether he was able and available within employment for this employer is moot. Claimant's eligibility for unemployment insurance benefits hinges on whether his separation from this employer was disqualifying, or alternately, whether he has requalified for benefits since separation. Therefore, the issue of claimant's permanent separation effective December 28, 2020 or whether he has requalified for benefits is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The unemployment insurance decision dated March 18, 2021, (reference 01) is modified in favor of the claimant/appellant. The claimant is able and available for work effective January 24, 2021. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of claimant's permanent separation effective December 28, 2020 or whether he has requalified for benefits is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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October 04, 2021
Decision Dated and Mailed

jlb/ol