

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG R BREMNER
Claimant

DEERE & COMPANY
Employer

APPEAL 19A-UI-07205-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant, Craig R. Bremner, filed an appeal to the September 3, 2019 (reference 01) initial decision which denied benefits. After proper notice, a telephone hearing was conducted on October 3, 2019. The claimant participated personally. The employer, Deere & Company, participated through Janice Gordon.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work effective August 11, 2019?
Is the claimant totally, partially or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment with Deere & Company in 1997. Each year, the employer has week long shutdowns and employees are laid off due to a lack of work.

The claimant was laid off of work for the entire week of August 4-10, 2019. He did not establish a claim for unemployment insurance benefits for that week. The claimant established a claim for unemployment insurance benefits effective August 11, 2019. His weekly benefit amount (WBA) is \$481.00 (See administrative records). For the week of August 11-17, 2019, the claimant was paid \$1,538.84 in vacation pay (See administrative records). The claimant did not complete a weekly continued claim for the week ending August 17, 2019. The claimant stated he mixed up the weeks he was supposed to file his claim for benefits. He resumed full-time employment on August 19, 2019.

REASONING AND CONCLUSIONS OF LAW:

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.

For the week ending August 10, 2019, the claimant was totally unemployed because he did not perform any work and did not receive any wages for the week. He would be eligible for benefits for the week ending August 10, 2019, provided he was otherwise eligible. However, the claimant does not have a claim on file for the week ending August 10, 2019 so he cannot be paid benefits for that week. The week is moot for purposes of this decision.

For the week ending August 17, 2019, the claimant received a full week of vacation pay in the amount of \$1,538.84. This amount exceeds his weekly benefit amount of \$481.00 plus fifteen dollars, so the claimant would be ineligible for benefits for the week ending August 17, 2019.

Iowa Admin. Code r. 871-24.23(23) provides: Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Effective August 18, 2019, claimant is ineligible for unemployment because he is performing work full-time.

DECISION:

The September 3, 2019 (reference 01) initial decision is affirmed. The claimant received vacation pay in excess of his weekly benefit amount plus fifteen dollars for the week ending August 17, 2019 and resumed full-time employment effective August 18, 2019. The claimant is ineligible to receive unemployment insurance benefits effective August 11, 2019.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn