

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LAURA E HAYENGA
Claimant

APPEAL NO. 23A-UI-00504-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PURE FISHING INC
Employer

**OC: 08/21/22
Claimant: Appellant (4R)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment
Iowa Code section 96.7(2)(a)(2)(a) – Employer Liability

STATEMENT OF THE CASE:

On January 18, 2023, Laura Hayenga (claimant) filed a timely appeal from the January 13, 2023 (reference 03) decision that denied benefits effective December 18, 2022, based on the deputy's conclusion the claimant was still employed with Pure Fishing under the same hours and wages as in the original contract of hire and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 3, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO, KCCO, DBRO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the two-week period of December 18-31, 2022.

Whether the claimant was partially and/or temporarily unemployed during the two-week period of December 18-31, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laura Hayenga (claimant) is employed by Pure Fishing, Inc. as a full-time Value Stream Lead. The claimant has been with Pure Fishing for six years and has been in current position for four years. Since July 2022, the claimant's work hours have been 6:00 a.m. to 4:00 p.m., Monday through Thursday. During the relevant period, the claimant's wage was \$24.13 an hour (approximated).

During the week of December 18 through 24, 2022, the claimant worked her regular full-time hours and earned her regular full-time pay.

During the week of December 25 through 31, 2022, Pure Fishing was on a temporary shut-down and did not have work for the claimant. Pure Fishing paid the claimant \$240.00 (approximated) in holiday pay for the Christmas Day holiday, December 25, celebrated

December 26, 2022. The claimant earned no other wages from Pure Fishing for that week. The claimant remained able to work and available for full-time work.

The claimant has a second, part-time, supplemental employment with Superior Saloon, Inc., where she works as a cook. The claimant's cook wage is \$13.00 an hour. During the week of December 25 through December 31, 2022, the claimant worked 15 hours at Superior Saloon, for which she earned wages totaling \$195.00.

The claimant's wages for the week ending December 31, 2022, including the \$195.00 from Superior Saloon and the \$240.00 from Pure Fishing, totaled \$435.00.

The claimant established an original claim for unemployment insurance benefits that was effective August 21, 2022. Iowa Workforce Development set the weekly benefit amount at \$551.00. Pure Fishing is the sole base period employer.

The claimant has filed a series of "additional claims" in connection with the benefit year that started in August 2022. The claimant prematurely established an additional claim that was effective December 18, 2022, but did not make a weekly claim for that week. The claimant "reopened" the claim effective December 25, 2022 and thereafter made a weekly claim for the week that ended December 31, 2022. The claimant erred when reporting her wages for the week that ended December 31, 2022. The claimant erroneously reported \$24.00 in holiday pay from Pure Fishing. The claimant erroneously omitted the wages earned from the Superior Saloon employment. The claimant's combined wages \$435.00 were less than her \$551.00 weekly benefit amount plus \$15.00 (or less than \$566.00).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

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

3. a. 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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual

offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Code section 96.1A(37) 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.

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

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant did not make a weekly claim for the week of December 18-24, 2022 and did not intend to make a weekly claim for that week during which she was employed full-time and earned full-time wages. In the absence of a weekly claim for the week that ended December 24, 2022, the claimant cannot be considered for benefits for that week and the administrative law judge need not further consider that week.

During the week of December 25-31, 2022, the claimant was able to work, available for work, and temporarily unemployed from her regular full-time employment with Pure Fishing, Inc. During that week, the claimant earned \$195.00 in wages from her part-time supplemental employment with Superior Saloon and received \$240.00 in holiday pay from Pure Fishing for the Christmas Day holiday. The combined \$435.00 was deductible from unemployment insurance benefits, but was less than the \$551.00 weekly benefit amount plus \$15.00 (or less than \$566.00). Accordingly, the claimant is eligible for partial benefits for the week that ended December 31, 2022, provided she meets all other eligibility requirements. Because Pure Fishing did not provide the regular full-time employment during the week that ended December 31, 2022, that employer's account may be assessed for benefits for that week.

DECISION:

The January 13, 2023 (reference 03) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant did not make a weekly claim for the week that ended December 24, 2022 and is not eligible for benefits for that week. During the benefit week that ended December 31, 2022, the claimant was able to work, available for work, and temporarily unemployed from her regular full-time employment with Pure Fishing, Inc. The claimant is eligible for benefits for the week that ended December 31, 2022, provided she meets all other eligibility requirements. However, the \$195.00 in wages from the part-time supplemental employment with Superior Saloon and the \$240.00 in holiday pay from Pure Fishing for the Christmas Day holiday are deductible from unemployment insurance benefits for that week. The employer account of Pure Fishing, Inc. may be charged for benefits for the week that ended December 31, 2022.

The period affected by the January 13, 2023 (reference 03) decision and this decision is limited to the two-week period between December 18, 2022 and December 31, 2022.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for determination of the partial weekly benefit amount payable for the week ending December 31, 2022, by deducting the \$195.00 in wages from the part-time supplemental employment with Superior Saloon and the \$240.00 in holiday pay from Pure Fishing for the Christmas Day holiday, \$435.00 combined.



James E. Timberland
Administrative Law Judge

February 7, 2023
Decision Dated and Mailed

jet/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.