

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ERIC C SHORES**

Claimant

**APPEAL NO. 19A-UI-07636-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**

Employer

**OC: 08/25/19**

**Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38)(b) – Partial Unemployment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 20, 2019, reference 01, decision that allowed benefits to the claimant effective August 25, 2019, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on October 21, 2019. Claimant Eric Shores did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jacob Miller represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A.

**ISSUES:**

Whether the claimant is able to work and available for work beginning August 25, 2019.  
Whether the claimant was partially unemployed beginning August 25, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Eric Shores established an original claim for benefits that was effective August 25, 2019. Iowa Workforce Development set Mr. Shore's weekly benefit amount at \$205.00. Mr. Shores has not made any weekly claims since he established the original claim. Mr. Shores has not received any unemployment insurance benefits in connection with his claim. Mr. Shores was employed by Pilot Travel Centers, L.L.C. as a part-time maintenance worker at the time he established his claim for benefits. Mr. Shores began the employment in 2017. Mr. Shores has historically worked 26 to 32 hours per week on average. Mr. Shores' most recent hourly wage was at or about \$11.30 per hour. Mr. Shores has historically earned \$299.00 to \$362.00 in weekly wages. That same pattern continued at the time Mr. Shores established the original claim for benefits that was effective August 25, 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 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 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.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Iowa Administrative Code rule 871-24.23(26) echoes Iowa Code section 96.7(2)(a), as follows:

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.

Because the claimant has made no weekly claims in connection with the original claim for benefits that was effective August 25, 2019, there is no need to address the able and available issues or the partial unemployment issues beyond the August 25, 2019 effective date of the original claim. Mr. Shores did not participate in the appeal hearing and presented no evidence to meet his burden of proving, by a preponderance of the evidence, that he was able to work, available for work, and partially unemployed at the time he established his claim for benefits. Benefits are denied effective August 25, 2019.

**DECISION:**

The September 20, 2019, reference 01, decision is reversed. The claimant failed to demonstrate that he was able to work, available for work, or partially unemployed beginning August 25, 2019. Benefits are denied effective August 25, 2019.

The claimant's ability to work and availability for work in connection with future claim weeks will only need to be addressed if and when the claimant makes weekly claims.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn