

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA J PEASE
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO. 21A-UI-01314-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 8, 2020, reference 04, decision that allowed benefits to the claimant for the period beginning August 9, 2020, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work available for work, but on a short-term layoff. After due notice was issued, a hearing was held on February 17, 2021. Claimant, Linda Pease, did not provide a telephone number for the appeal hearing and did not, participate. Joe Lockman represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning August 9, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning August 9, 2020.

Whether the employer's account may be charged for benefits for the period beginning August 9, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has secured work through the Jacksonville, Illinois branch of Express Services off-and-on since September 2019. The employer is a temporary employment agency. The present matter concerns the period beginning August 9, 2020. On Tuesday, August 11, 2020, the claimant began work in a full-time, temp-to-hire work assignment at Production Press, Inc. The work hours were 7:30 a.m. to 4:00 p.m., Monday through Friday. The pay was \$10.00 per hour. The work involved assembling brochures as they came out of the printer. The claimant worked half a day in the assignment, left at her lunch break, and did not return. The claimant advised the employer that she left because she did not like the work. Express Services and Production Press, Inc. had ongoing work available to the claimant in the work assignment.

The claimant next made contact with the employer on August 20, 2020. At that time the claimant told the employer that she was available for work. The claimant made no further contact with the employer after the contact on August 20, 2020.

The claimant established an original claim for benefits that was effective May 31, 2020. The claimant has made weekly claims for each consecutive week between May 31, 2020 and February 13, 2021. The claimant has reported for each week that she was not working, that she was able to work and available for work, and that she had no wages to report. The claimant made such a weekly claim for the week that ended August 15, 2020, the week when she started an assignment, worked half a day, made approximately \$40.00, and then decided not to return to the assignment. The claimant has received benefits for each of the weeks between May 31, 2020 and November 28, 2020.

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 Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

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).

The claimant did not participate in the appeal hearing and presented no evidence to meet her burden of proving that she has been able to work and available for work since August 9, 2020. The evidence indicates that the claimant was not in fact available for work within the meaning of the law during the week of August 9-15, 2020, the week during which the claim started and quickly abandoned the new full-time, temp-to-hire work assignment. The claimant was not laid off during the week of August 9-15, 2020. The claimant is not eligible for benefits for the week that ended August 15, 2020.

This matter will be remanded to the Benefits Bureau for meaningful investigation and determination of whether the claimant has in fact been available for within the meaning of the law since August 16, 2020 or whether the claimant has instead engaged in a pattern of conduct designed to hinder employment.

DECISION:

The December 8, 2020, reference 04, decision is reversed. The claimant was not available for work and not laid off during the week of August 9-15, 2020 and is not eligible for benefits for that week. This employer's account will not be charged for benefits for the week that ended August 15, 2020.



James E. Timberland
Administrative Law Judge

March 1, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law for the week of August 9-15, 2020. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**