

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG L SCHINDLER
Claimant

NCS PEARSON INC
Employer

APPEAL 19A-UI-08963-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/27/19
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 8, 2019 (reference 01) unemployment insurance decision that found claimant was no longer temporarily unemployed and must seek work. The parties were properly notified of the hearing. A telephone hearing was held on December 5, 2019, at 1:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant failed to make an active work search.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with NCS Pearson, Inc. ended in November 2018. Whether claimant is eligible for benefits based on his separation from employer has not been decided by the Benefits Bureau of Iowa Workforce Development (IWD).

Claimant has been employed by BMF Tax and Accounting (BMF) since December 10, 2018. Claimant's work hours with BMF were reduced in early November 2019, which prompted claimant to file his original claim for unemployment insurance benefits effective October 27, 2019. There has been no initial investigation and determination regarding whether claimant is partially or temporarily unemployed with respect to BMF (Employer ID # 584030-000). The issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed with the employer and is not temporarily unemployed. He is required to make job searches, pending the outcome of the remanded issues.

Iowa Code § 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 § 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.

Claimant is not temporarily unemployed with employer. The claimant is required to seek work each week he files for unemployment insurance benefits, pending the outcome of the remanded issues.

DECISION:

The November 8, 2019 (reference 01) unemployment insurance decision is affirmed, pending the outcome of the remanded issues.

REMAND:

The issue of claimant's partial or temporary employment with respect to BMF Tax and Accounting (Employer ID # 584030-000) is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision to include both parties with appeal rights.

The issue of whether claimant's separation from employer, NCS Pearson, Inc., qualifies him for unemployment insurance benefits is remanded for a fact-finding interview, if necessary, and unemployment insurance decision to include both parties with appeal rights.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn