

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICK R MBIYOMBIYO
Claimant

WINDSOR WINDOW COMPANY
Employer

APPEAL 20A-UI-14967-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (4R)

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 6, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 9, 2021, at 11:00 a.m. Claimant participated. Swahili interpretation was provided by Nadia (ID # 12651) of CTS Language Link. Employer participated through Shawna Madonia, Human Resources Representative. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Wrapper on the final paint line from July 22, 2019 until his employment with Windsor Window Company ended on August 31, 2020. Claimant's wife tested positive for Covid-19; employer required claimant to quarantine for 14 days. Claimant last performed work for employer on July 23, 2020. Claimant's quarantine expired August 9, 2020. Claimant was expected to return to work on August 10, 2020. The return date was communicated to claimant. Claimant did not return to work on August 10, 2020.

Claimant did not return to work on August 10, 2020 because he was experiencing symptoms of Covid-19, his wife was both ill and pregnant and he was caring for his other children. Claimant's wife gave birth on September 30, 2020. After that time, claimant no longer needed to provide care for his children and was no longer ill. Claimant had no barriers to employment after October 1, 2020.

Employer has had claimant's regular hours available for claimant since he filed his initial claim effective July 26, 2020. Claimant earned no wages and received no paid time off from employer after July 26, 2020.

The issue of separation has not been the subject of an initial investigation or decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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. R. 871-24.23(1), (8), (26) provide:

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

- (1) An individual who is ill and presently not able to perform work due to illness.
- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.
- (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.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Effective July 26, 2020, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, he is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. From July 26, 2020 until September 30, 2020, claimant was not able to and available for work due to illness and personal reasons. Claimant had no barriers to employment effective October 1, 2020.

DECISION:

The November 6, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant is totally unemployed effective July 26, 2020. Claimant was not able to and available for work from July 26, 2020 until September 30, 2020. Benefits are denied from July 26, 2020 until September 30, 2020. Claimant was able to and available for work effective October 1, 2020. Benefits are allowed effective October 1, 2020, provided claimant is otherwise eligible.

REMAND:

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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February 26, 2021
Decision Dated and Mailed

acw/mh