

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN A FLETCHER
Claimant

APPEAL 21A-UI-06069-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION

HAWKEYE COMMUNITY COLLEGE
Employer

OC: 03/29/20
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.4(5) – Reasonable Assurance

STATEMENT OF THE CASE:

The employer/appellant, Hawkeye Community College, filed an appeal from the February 23, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 3, 2021. The claimant participated. The employer was represented by Lynn Duit. At the time of the hearing, both parties waived notice on the issues of whether claimant was able to and available for work, whether he was considered totally, temporarily or partially unemployed and employer chargeability.

The administrative law judge took official notice of the administrative records, including wage history. Claimant Exhibit A was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work effective June 14, 2020?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?
Did the claimant have reasonable assurance of continued employment in the next school year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount is \$199.00. Claimant made weekly continued claims through November 7, 2020.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed part-time since 2014. Most recently, claimant has worked as a part-time driver for the employer. Claimant works year-round, and not just during the academic terms for the Senior Companion Program. Claimant does not offer claimant a new contract each year; his employment is continuous. Claimant's hours vary from week to week based upon business needs.

Prior opening his claim, claimant worked on March 15, 2020. Claimant was then paid each week by the employer through June 30, 2020, at 6.04 hours per week. The issue of claimant's eligibility from March 29, 2020 through June 13, 2020 was addressed in the reference 01 decision dated February 23, 2021 decision.

Since June 14, 2020, claimant worked one shift in September 2020, and has worked two shifts in 2021. Otherwise, employer has not had work available to claimant. Claimant is otherwise able and available for work.

Claimant is listed as Group Code 8, which currently indicates that he is unemployed because of the pandemic. Under this group code, the claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

This information is also included on the IWD website, which states:

ATTENTION EMPLOYERS:

At this time, IWD is not charging employers for claims made by their employees due to COVID-19 related unemployment. Presently, there are also no plans to enact a trigger to begin charging employers in the event that the trust goes below a certain threshold. IWD will notify employers of any changes to this decision should the need arise.

See: <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>

REASONING AND CONCLUSIONS OF LAW:

As a preliminary issue, the administrative law judge concludes the issue of reasonable assurance is moot as claimant is a year-round employee without customary breaks between academic years or terms.

For the reasons that follow, the administrative law judge concludes the initial decision is modified in favor of the employer/appellant.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 96.7(2)a(2)(a), (b), and (c) 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.

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".

With the exception of three shifts since June 14, 2020, claimant has otherwise been totally unemployed. For the three shifts claimant has worked, claimant would be considered partially unemployed and eligible for partial benefits provided he did not earn more than his weekly benefits amount plus fifteen dollars (\$199.00 + \$15.00 = \$214.00). Claimant was otherwise able to and available for work. Benefits are allowed beginning June 14, 2020 through November 7, 2020, provided claimant is otherwise eligible.

As claimant is classified as Group Code 8, the employer shall not be charged for these benefits.

DECISION:

The February 23, 2021 (reference 04) unemployment insurance decision is modified in favor of appellant. The issue of reasonable assurance is moot.

Claimant was totally or partially unemployed and was able to and available for work. Benefits are allowed beginning June 14, 2020, provided he is otherwise eligible. The employer shall not be charged for any benefits paid effective June 14, 2020 through November 7, 2020.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

May 12, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT:

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations 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. More information about how to apply for PUA is available online at: www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>