

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBBY J LUETJE
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-13871-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1(A)37 – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 7, 2021 (reference 01) unemployment insurance decision that denied unemployment insurance benefits effective March 21, 2021 finding that the claimant was still employed in his part-time job at the same hours and same wages as his original contract of hire. After due notice was issued, a telephone hearing was held on August 13, 2021. The claimant participated personally. The employer participated through witness Abby Beier and was represented by Larry Lampel. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time senior audio video technician. He began his employment on March 8, 2004 and continues to work for the employer to date.

Claimant filed an original claim for benefits effective March 21, 2021. His established weekly-benefit amount is \$512.00. He filed weekly-continued claims for benefits from March 21, 2021 through June 5, 2021. He reported earned wages for the week-ending March 27, 2021 of \$0.00. He reported earned wages for the week-ending April 3, 2021 of \$803.00. He reported earned wages for the week-ending April 10, 2020 of \$525.00. He reported earned wages for the week-ending April 17, 2021 of \$890.00. He reported earned wages for the week-ending April 24, 2021 of \$1,348.00. He reported earned wages for the week-ending May 1, 2021 of \$1,437.00. He reported earned wages for the week-ending May 8, 2021 of \$0.00. He reported earned wages for the week-ending May 15, 2021 of \$0.00. He reported earned wages for the

week-ending May 22, 2021 of \$933.00. He reported earned wages for the week-ending May 29, 2021 of \$996.00. He reported earned wages for the week-ending June 5, 2021 of \$659.00. Claimant was able to and available for work for the weeks in which he earned \$0.00 in wages if work would have been available to him in his role as a senior audio video technician.

Claimant's administrative records establish that he was previously approved for Federal PUA benefits effective March 21, 2021 and continuing through June 12, 2021. The matter of whether the claimant continues to be eligible for PUA benefits for the weeks in which he is found eligible for regular unemployment insurance benefits funded by the State of Iowa will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.4(3) provides:

Required Findings.

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", subparagraph (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 Code § 96.1A(37) provides as follows:

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

37. "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 § 96.7(2)a(2)a provides:

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.

Iowa Admin. Code r. 871-24.23(26) provides:

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.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

In this case, the claimant filed an original claim for benefits effective March 21, 2021 when his regular full-time hours were reduced due to business needs. For the weeks in which the claimant reported no earnings, he was totally unemployed and eligible for benefits as he established that he was able to and available for work in his senior audio video technician role. As such, benefits are allowed for those weeks ending March 27, 2021; May 8, 2021 and May 15, 2021. The employer's account may be charged for benefits paid.

For the week-ending April 10, 2021, claimant worked a reduced schedule and earned wages that did not exceed his weekly-benefit amount, plus \$15.00. As such, he was partially

unemployed for that one-week period and partial regular unemployment insurance benefits are allowed for that one-week period. The employer's account may be charged for benefits paid.

For the weeks in which the claimant filed weekly-continued claims but exceeded his weekly-benefit amount, plus \$15.00, he was neither totally or partially unemployed. As such, benefits are denied for the week-ending April 3, 2021; April 17, 2021; April 24, 2021; May 1, 2021; May 22, 2021; May 29, 2021; and June 5, 2021.

DECISION:

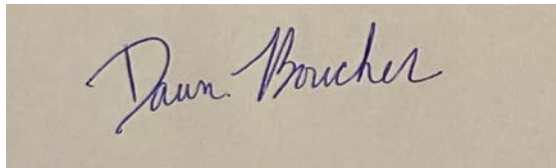
The June 7, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was totally unemployed for the week-ending March 27, 2021; May 8, 2021 and May 15, 2021 and regular unemployment insurance benefits funded by the State of Iowa are allowed for those weeks, provided the claimant remained otherwise eligible.

For the week-ending April 10, 2021, claimant worked a reduced schedule and earned wages that did not exceed his weekly-benefit amount, plus \$15.00. As such, he was partially unemployed for that one-week period and partial regular unemployment insurance benefits funded by the State of Iowa are allowed for that one-week period.

Claimant was neither totally nor partially unemployed for the week-ending April 3, 2021; April 17, 2021; April 24, 2021; May 1, 2021; May 22, 2021; May 29, 2021; and June 5, 2021 and regular unemployment insurance benefits funded by the State of Iowa are denied for those weeks.

REMAND:

The issue of whether the claimant is eligible for PUA benefits during the weeks in which he was found eligible for regular unemployment insurance benefits funded by the State of Iowa is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

August 18, 2021
Decision Dated and Mailed

db/scn