

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JONATHAN MEYER
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 21A-UI-07062-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/22/20
Claimant: Respondent ()

Iowa Code § 96.19(38) – 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:

The employer filed an appeal from the March 1, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2021, at 3:00 p.m. Claimant participated. Employer participated through Sarah Fiedler, Human Resources Director. 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:

The claimant began employment with Team Staffing Solutions' site employer, Raymond Corporation, on August 17, 2020. The claimant works an average of 40 hours per week. In November 2020, the claimant's hourly wage was \$13.85. The claimant does not have fringe paid time off benefits. His compensation is solely from hours worked.

On November 23, 2020, the claimant informed Account Manager Mary Kirchner he tested positive for Covid19. The claimant was instructed to remain away from Raymond Corporation's facility for the next 10 days with a scheduled return date of December 7, 2020.

On November 27, 2020, the claimant was airlifted to Iowa City because he had a blood clot that was caused by his Covid19 infection. He had to undergo an emergency surgery at the hospital.

After his surgery, the claimant's physician stated he would be unable to return to work for a minimum of six weeks and a maximum of eight weeks.

After receiving notice of the claimant's restrictions on November 15, 2020, Raymond Corporation decided to end his assignment because it was such an extended leave of absence. However, Raymond Corporation said that it would bring the claimant back on if he was able and available for work.

On February 22, 2021, the claimant returned to work at Raymond Corporation. The claimant was released to return to work without restriction effective February 24, 2021. Work was available for the claimant at Raymond Corporation during the time he was away. The claimant did not work for other employers during this period.

Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020. Claimant's weekly benefit amount is \$320.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed from the week ending November 28, 2020 to February 27, 2021. However, the claimant was not able and available to work for that period of time. Benefits are denied effective November 22, 2020.

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.

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 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.

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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 (1) (10) and (35) 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.

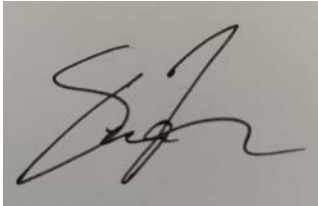
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant was totally unemployed from the week ending November 28, 2020 to February 27, 2021. However, the claimant is not entitled to benefits because he was either ill or subject to doctor's restrictions that prevented him from working during this period. These reasons disqualify him from benefits under Iowa Admin. Code r. 871-24.23 (1) and (35). Benefits are denied.

DECISION:

The March 1, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was ill or subject to doctor's restrictions for the entire period he was totally unemployed. Benefits are denied effective November 22, 2020.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

June 17, 2021
Decision Dated and Mailed

smn/scn