

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRET MOORMAN**

Claimant

**APPEAL 21A-UI-23756-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USF HOLLAND INC**

Employer

**OC: 08/01/21**

**Claimant: Respondent (1)**

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Iowa Code section 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code 96.5(2)A – Ten Times Benefit Amount Requalification Discharge

**STATEMENT OF THE CASE:**

The employer, USF Holland, filed an appeal from the October 19, 2021, (reference 01) unemployment insurance decision that allowed benefits effective August 1, 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2021. Claimant participated and testified. Employer participated through Unemployment Specialist Tina Amante. Exhibit 1 was received into the record. Official notice was taken of the agency records.

**ISSUES:**

Is the claimant partially or totally unemployed?

Is claimant able to and available for work effective August 1, 2021?

Is the employer subject to charge?

Whether the claimant has made ten times his weekly benefit amount since his separation from employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has worked for the employer as a full-time dockworker driver since September 5, 2017. The claimant ordinarily works at least 40-hours per week with an hourly rate of \$24.51.

The employer placed the claimant on an unpaid suspension to be served on August 3, 2021, August 4, 2021, and August 5, 2021. In that context, the claimant only earned \$497.30 after working for a combined 20.29 hours on August 2, 2021 and August 6, 2021. The administrative record DBRO shows the claimant reported earning \$450.00 for the week ending August 7, 2021.

The employer placed the claimant on an unpaid suspension to be served on August 31, 2021, September 1, 2021, and September 2, 2021. In that context, the claimant only earned \$491.42 after serving a combined 20.05 on August 30, 2021 and September 3, 2021. The administrative record DBRO shows the claimant reported earning \$350.00 for the week ending September 4, 2021.

On September 27, 2021, the employer terminated the claimant. In that context, the claimant only worked 10.31 hours for the week ending October 1, 2021. The administrative record DBRO shows the claimant reported earning \$175.00 for the week ending October 2, 2021.

On October 4, 2021, the employer reinstated the claimant and rescinded its decisions to suspend him. The employer did not give the claimant backpay for the time he served the unpaid suspensions. Work would have been available if the claimant had not been subject to discipline. The claimant was able and available to work these shifts as well.

The administrative record Wage-A shows the claimant did not have any other employers during his base period. The claimant confirmed this information during the hearing. His weekly benefit amount is \$551.00

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed for the weeks ending August 7, 2021, September 4, 2021, and October 2, 2021, and was able to and available for work for those weeks. The administrative further finds whether the claimant has earned more than ten times his weekly benefit amount moot because he was not separated from employment for a disqualifying reason. Benefits are granted.

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", 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 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 96.7(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.

*Is the claimant partially or totally unemployed?*

The claimant was partially unemployed for the weeks ending August 7, 2021, September 4, 2021, and October 2, 2021. That is because he did not exceed \$566.00 or his weekly benefit amount of \$551.00 plus \$15.00, as outlined in Iowa Code section 96.1A(37).

*Is claimant able to and available for work effective August 1, 2021?*

The claimant was able and available for work for those weeks. The employer decided not to provide him work for those weeks, even though it was available.

*Is the employer subject to charge?*

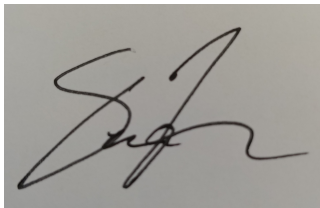
The claimant does not have any other employers in his base period. As a result, the employer is subject to charge.

*Whether the claimant has made ten times his weekly benefit amount since his separation from employment?*

The administrative law judge has limitations similar to other members of the judiciary in that he is not supposed to answer questions that are academic or theoretical. Here, the employer rescinded the claimant's termination. The employer is not contending on appeal that the claimant's separation was disqualifying. Even if the separation was initially found to be disqualifying, it cannot be logically deduced the claimant was ever separated from employment. The administrative law judge finds this issue is moot given these circumstances.

**DECISION:**

The October 19, 2021, (reference 01) unemployment insurance decision is affirmed. Benefits are allowed. The claimant was partially unemployed, able and available for work effective August 7, 2021, September 4, 2021, and October 2, 2021. The issue regarding whether he made more than ten times his weekly benefit is moot. The employer's account (#222427) is subject to charge. Benefits are granted.



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Sean M. Nelson  
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January 25, 2022  
Decision Dated and Mailed

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