

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD A RASMUS
Claimant

IA DEPT OF NATURAL RESOURCES
Employer

APPEAL 21A-UI-16407-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On July 26, 2021, claimant Ronald A. Rasmus filed an appeal from the July 16, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was still employed with the employer at the same hours and wages as contemplated at his contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Thursday, September 16, 2021. The claimant, Ronald Rasmus, participated. The employer, Iowa Department of Natural Resources, participated through witness Dave Cretors, Bureau Chief for Customer and Employee Services; and hearing representative Erin Bewley represented the employer. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant totally or partially unemployed?
Is the claimant still employed at his same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed with the Iowa Department of Natural Resources as a part-time seasonal parks staff member. His employment during the 2021 season commenced on April 16, 2021. Claimant separated from employment on either May 5 or May 7, 2021. This separation has not yet been examined by Iowa Workforce Development.

During the 2021 season, claimant worked five days, spread over a three-week time period from April 18 through May 8, 2021. He worked 5.5 hours on April 19; 8 hours on April 22; 6 hours on April 29; 6 hours on May 4; and 6 hours on May 5.

Since his separation, claimant has been looking for part-time employment. Claimant is disabled and is looking for work that does not require him to stand all day. When asked for specific jobs

he has applied for, claimant listed "a job at a place where [he] could do outside work and this and that."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is eligible for benefits from March 21, 2021, through April 17, 2021. He was not available for work from April 18, 2021, through May 8, 2021. Claimant is eligible for benefits effective May 9, 2021, provided he is otherwise eligible based on his separation from employment and all other criteria.

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".

Iowa Code § 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 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has two periods of total unemployment: one from March 21 through April 17; and the other beginning May 9.

The claimant also filed claims for benefits between April 18 and May 8, while working for the employer. As he was not totally unemployed, he would only qualify for benefits if he was partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). Here, the claimant was hired into a part-time position. He has worked part-time hours during his entire employment. His hours have fluctuated as was the expectation when he was hired. As the claimant worked in a part-time job in the same hours and wages contemplated at hire, the claimant was not partially unemployed and is not eligible for benefits.

This matter will be remanded for a determination of whether claimant's separation is qualifying for benefits and for a determination on whether claimant is making adequate work searches.

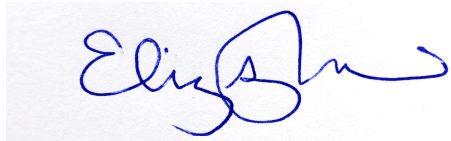
DECISION:

The July 16, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant was totally unemployed from March 21 through April 17, and effective May 9, 2021. Benefits are allowed for those periods, provided he is otherwise eligible.

The claimant was neither totally nor partially unemployed from April 18 through May 8, and he is not eligible for benefits for those weeks.

REMAND:

The issues of whether claimant qualifies for benefits based on his separation from employment and whether claimant is making adequate work searches are remanded to the Benefits Bureau for determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 21, 2021
Decision Dated and Mailed

lj/kmj