

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW KELLOGG
Claimant

APPEAL 22A-UI-06972-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/02/22
Claimant: Appellant (5R)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment

STATEMENT OF THE CASE:

On March 20, 2022, Matthew Kellogg (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 16, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits.

A telephone hearing was held on May 16, 2022. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer Croell, Inc. on or about June 22, 2017. Claimant remains employed there. Claimant is employed as a ready-mix driver. The work is seasonal in nature. Claimant is laid off each winter due to a lack of work and then returns to work in spring each year. Claimant was laid off most recently in the week ending December 18, 2021. He returned to full-time work in the week ending April 16, 2022.

Claimant opened an original claim for benefits effective January 2, 2022. He filed a continued claim each week from the benefit week ending January 8, 2022 through the benefit week ending April 16, 2022. Claimant earned no wages during the weeks filed other than earning \$90.00 in the week ending January 15; \$270.00 in the week ending March 26; \$202.00 in the week ending April 2; and \$900.00 in the week ending April 16, 2022. Claimant’s weekly benefit amount is \$571.00. His weekly benefit amount plus \$15.00 is \$586.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 16, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect.

Iowa Code section 96.4 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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.

Claimant was temporarily unemployed due to a lack of work in the week ending January 8, 2022. He was partially unemployed while job attached in the following week ending January 15, 2022 due to earning less than his weekly benefit amount plus \$15.00. Claimant was again temporarily unemployed from the benefit week ending January 22 through the benefit week ending February 12, 2022.

Claimant ceased to be temporarily unemployed and became totally unemployed after the benefit week ending February 12, 2022. This is because an individual cannot be temporarily unemployed for a period exceeding four consecutive weeks.

Claimant was then totally unemployed from the week ending February 19, 2022 through the benefit week ending March 19, 2022, as he performed no work during this period.

Claimant was partially unemployed while job attached in the weeks ending March 26 and April 2, 2022, as he performed some work for employer and earned wages in an amount less than his weekly benefit amount plus \$15.00.

Claimant was then again temporarily unemployed due to a lack of work in the benefit week ending April 9, 2022. Claimant was not totally, partially, or temporarily unemployed in the week ending April 16, 2022, as he was back to work and earned wages in excess of his weekly benefit amount plus \$15.00.

An individual who is temporarily unemployed or partially unemployed while still attached to their regular employer need not be able to work, available for work, and earnestly and actively seeking work during each week filed in order to be eligible for benefits in that week. However, an individual who is totally unemployed must meet those requirements in order to be eligible for benefits each week.

Iowa Code Section 96.4(3)b allows the Department to establish by rule a process to waive or alter the work search requirements in certain situations. The administrative law judge has searched the relevant sections of the Iowa Administrative Code and is unable to locate any such rule applicable to this circumstance.

Ultimately, regardless of the group code IWD places claimant in or any other agency actions, the administrative law judge must apply the law as it exists. The law does not allow temporary unemployment for more than four consecutive weeks or a waiver of work search requirements absent establishment by rule of a process for such a waiver.

The administrative law judge does not find it appropriate to decide for the first time on appeal whether claimant was able to work, available for work, and earnestly and actively seeking work and thus eligible for benefits during the weeks he was not temporarily unemployed or partially unemployed while attached to employer. That matter is therefore remanded to the Benefits Bureau for a fact-finding investigation and determination on that issue.

DECISION:

The decision dated March 16, 2022 (reference 01) that determined claimant was no longer temporarily unemployed and must seek work to remain eligible for benefits is MODIFIED with no change in effect.

It is modified to clarify whether claimant was totally, partially, or temporarily unemployed in each week filed as set forth above.

REMAND:

This matter is remanded to the Benefits Bureau for a fact-finding investigation and determination regarding whether claimant was able to work, available for work, and earnestly and actively seeking work and thus eligible for benefits during the weeks he was not partially unemployed while job attached or temporarily unemployed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 17, 2022
Decision Dated and Mailed

abd/abd