

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WADE KUPKA
Claimant

MIDWEST RECONSTRUCTION CO
Employer

APPEAL 24A-UI-10742-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/24
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Midwest Reconstruction Co, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) December 24, 2024 (reference 02) unemployment insurance (UI) decision. IWD found Mr. Kupka eligible for REGULAR (state) UI benefits as of December 8, 2024, as long as no other decision denied him UI benefits, because IWD concluded he is on a short-term layoff as of this date, and he is able to and available for work during the layoff. On January 2 2025, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Kupka for a telephone hearing scheduled for January 15, 2025.

The administrative law judge held a telephone hearing on January 15, 2025. The employer participated in the hearing through Kyler Tuller, director of human resources, and Cole Catge, general manager. Mr. Kupka participated in the hearing personally. The administrative law judge admitted Department's Exhibits 1-3, Employer's Exhibits 1-5, and Claimant's Exhibit A as evidence.

The administrative law judge concludes Mr. Kupka is not eligible for REGULAR (state) UI benefits as of December 8, 2024 because he is still employed in his job in the same way he had been before he applied for UI benefits.

ISSUES:

Is Mr. Kupka able to and available for work as of December 8, 2024?

Is Mr. Kupka partially or temporarily unemployed as of December 8, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Kupka began working for the employer, a base period employer, on July 8, 2024. He works as a full-time design specialist/outside sales agent. The employer does not guarantee Mr. Kupka any hours or sales and pays him on a commission-basis only.

¹ Appellant is the person or employer who appealed.

The employer gives sales agents sales leads based on performance, so sales agents who have been employed with the employer longer receive leads first. The employer's business slows down in the winter months so the employer has fewer leads to give to the sales staff. The employer explained all of this to Mr. Kupka during the hiring process. The employer also gives sales staff marketing materials so they can generate their own sales without leads from the employer. The employer trained Mr. Kupka to sell products for outside a home and inside a home.

Mr. Kupka applied for UI benefits effective December 8, 2024 because the employer hasn't given him any leads since November 27, and he hasn't been able to generate sales on his own. The winter slow down the employer is currently experiencing is a usual slow down. Mr. Kupka remains employed with the employer full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Kupka is still employed in his job as of December 8, 2024 in the same way he had been before he applied for REGULAR (state) UI benefits, and he is not partially or temporarily unemployed.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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:

"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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.² To be able to work, "[a]n 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."³ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁴

In this case, the employer continues to offer Mr. Kunka the same employment as of December 8 that it had been offering him before he applied for UI benefits. The employer agreed to offer Mr. Kupka leads when they were available and offer him marketing help to generate his own sales, and the employer continued to do so as of December 8. The fact that leads from the employer has slowed down and Mr. Kupka is not earning money in his 100 percent commission-based job does not mean his employment has changed. Mr. Kupka is still employer in his job in the same way he had been before he applied for UI benefits. Mr. Kupka is not eligible for REGULAR (state) UI benefits as of December 8, 2024.

DECISION:

The December 24, 2024 (reference 02) UI decision is REVERSED. Mr. Kupka is still employed in his job as of December 8, 2024 in the same way he had been before he applied for UI benefits. Mr. Kupka is not eligible for REGULAR (state) UI benefits as of December 8, 2024.

/s/ *Daniel Zeno*

Daniel Zeno
Administrative Law Judge

January 22, 2025
Decision Dated and Mailed

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² Iowa Admin. Code r. 871-24.22.

³ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁴ *Sierra* at 723.

APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines IA 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines IA 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.