

State of Wisconsin



Labor and Industry Review Commission

[Redacted Box]

Employee

Department of Administration
Employer

Hearing No. 20005619MD

Unemployment Insurance
Decision¹

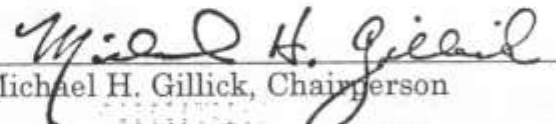
Dated and Mailed:

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The commission **reverses** the appeal tribunal decision. Accordingly, the employee is available for suitable work beginning in week 15 of 2020, and is eligible for unemployment insurance benefits, if otherwise qualified.

By the Commission:


Michael H. Gillick, Chairperson

David B. Falstad, Commissioner


Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the employee's eligibility for unemployment insurance benefits. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development held a hearing and issued a decision that denied benefits. The commission received a timely petition for review. The commission has considered the employee's petition and brief and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact and Conclusions of Law

1. The employee, a retired school teacher, has worked as a part-time tour guide at the state capitol for the last ten years.
2. The employee initiated a claim for unemployment benefits in weeks 15 of 2020 when the capitol was closed under a state emergency order. No work was available from the employer after that.
3. The employee has worked part-time (average 25 hours per week) for the last ten years. The employee expects to return to work as a tour guide when the capital allows in-person tours again. The employee also plans to work during the election of 2020.
4. The employee was available for work beginning in week 15 of 2020, within the meaning of Wis. Stat. § 108.04(2) and Wis. Admin. Code § DWD 128.01, and is therefore eligible for unemployment insurance benefits, if otherwise qualified.

Memorandum Opinion

The employee, a retired school teacher, has worked as a part-time tour guide at the state capitol for the last ten years. The employee initiated her claim for benefits in week 15 of 2020 when the capitol was closed due to the COVID-19 pandemic. No work was available for the employee after that. The employer did not appear at the hearing.

As a general rule, to be eligible for unemployment insurance benefits as to any given week, a claimant must be able to work, available for work, and actively seeking work during the week.² "Able to work" means that the claimant maintains an attachment to the labor market and has the physical and psychological ability to engage in some substantial gainful employment in suitable work.³ "Available for work" means that the claimant maintains an attachment to the labor market and is ready to perform full-time suitable work in the labor market. "Full-time work" means work performed for 32 hours or more per week.⁴ However, an individual with a physical or psychological restriction will not be considered unavailable for work solely because of his or her inability to work full-time, provided the individual is available for suitable work for the number of hours the individual is able to work.⁵ A claimant is not

² Wis. Stat. § 108.04(2)(a).

³ Wis. Admin. Code § DWD 128.01(3)(a).

⁴ Wis. Stat. § 108.02(15s).

⁵ Wis. Admin. Code § DWD 128.01(3)(b).

available for suitable work if he or she has withdrawn from the labor market due to restrictions on his or her availability for work.⁶

Under Wis. Admin. Code § 128.01(2), an employee claiming unemployment benefits is presumed able to work and available for work, unless evidence is obtained that the claiming employee was not able to work or available for work. In her brief, the employee argues she is available for full-time work and correctly notes that her work searches were waived under the emergency administrative rule, ER2006, approved by the rule-making committee of the legislature. The commission conferred with the ALJ who conducted the hearing as to his credibility and demeanor impressions. The ALJ noted the employee was very credible and direct in her testimony and did not try to avoid any questions the ALJ asked of her. Without any contrary evidence to rebut the employee's testimony, the employee is presumed able to and available for suitable work in her labor market. The commission's reversal of the ALJ's decision is based on the un rebutted presumption that the employee was able to and available for work within the meaning of Wis. Admin. Code § DWD 128.01(2) and not any differing credibility assessment.

cc: Emma Woods

⁶ Wis. Admin. Code § DWD 128.01(4)(a).