

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

WILLIAM L CUPPLES
Claimant

APPEAL NO. 19A-UI-01750-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZPH CLEANING SOLUTIONS LLC
Employer

OC: 01/20/19
Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 14, 2019, reference 02, decision that allowed benefits to the claimant effective January 20, 2019, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on March 13, 2019. Claimant William Cupples did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Becky Van Est represented the employer and presented additional testimony through Ted Hammes. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims (KCCO) and of the claimant's base period wages (WAGE-A).

ISSUES:

Whether the claimant has been able to work and available for work since January 20, 2019.

Whether the claimant has been partially unemployed since January 20, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning January 20, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant William Cupples established an original claim for unemployment insurance benefits that was effective January 20, 2019, but has made no weekly claims and has received no benefits. Mr. Cupples has recently been employed by ZPH Cleaning Solutions, L.L.C. as a part-time cleaner. The employer has a contract to provide cleaning services to the Iowa Department of Transportation. Mr. Cupples began the employment on July 1, 2017. In January 2019, the employer cut Mr. Cupples' work hours from 15-24 per week to 8 hours per week. Though the employer continues to consider Mr. Cupples an employee, Mr. Cupples has recently not performed work for the employer for a number of weeks.

REASONING AND CONCLUSIONS OF LAW:

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 96.19, 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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable

cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

Mr. Cupples is not eligible for benefits for the period beginning January 20, 2019. Mr. Cupples has not made any weekly claims. Mr. Cupples did not participate in the appeal hearing and did not present any evidence to meet his burden of proving that he is able to work, available for work, and partially unemployed. Benefits are denied effective January 20, 2019. In the event that Mr. Cupples reactivates his unemployment insurance claim at some future date, his ability to work, availability for work, and associated issues for the period that will begin on the effective reactivation date will need to be adjudicated at that time.

In light of information from the employer indicating that Mr. Cupples has not recently performed work for the employer, this matter will be remanded to the Benefits Bureau for determination of whether there has been a separation from the employment that disqualifies Mr. Cupples for benefits or that relieves the employer of liability for benefits.

DECISION:

The February 14, 2019, reference 02, decision is reversed. The claimant has not demonstrated that he is able to work, available for work, and/or partially unemployed for the period beginning January 20, 2019. Benefits are denied effective January 20, 2019.

This matter is remanded to the Benefits Bureau for determination of whether there has been a separation from the employment that disqualifies the claimant for benefits or that relieves the employer of liability for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs