

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZEYAD A HAMMADI
Claimant

APPEAL NO. 14A-UI-06814-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPIRIT HOMECARE LLC
Employer

OC: 01/26/14
Claimant: Appellant (4-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability
Iowa Code Section 96.4(6)(a) – Department Approved Training

STATEMENT OF THE CASE:

Zeyad Hammadi filed a timely appeal from the July 1, 2014, reference 04, decision that denied benefits effective June 8, 2014 based on an agency conclusion that he was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on July 23, 2014. Mr. Hammadi participated in the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the claimant's base period wages, of the wages reported by the claimant in connection with the additional claim that was effective June 8, 2014, and of the agency's approval of the claimant for department approved training.

ISSUES:

Whether Mr. Hammadi had been subject to the availability requirement since he established the additional claim for benefits that was effective June 8, 2014.

Whether Mr. Hammadi had been able to work and available for work since June 8, 2014.

Whether Mr. Hammadi had been partially unemployed since June 8, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Zeyad Hammadi established an original claim for benefits that was effective January 26, 2014. Workforce Development calculated Mr. Hammadi's weekly benefit amount at \$160.00. Mr. Hammadi established an additional claim for benefits that was effective June 8, 2014. Mr. Hammadi's base period for purposes of the claim year that started on January 26, 2014, consists of the fourth quarter of 2012 and the first, second, and third quarters of 2013. Mr. Hammadi only had base period wages during the fourth quarter of 2012 (\$3,686.74) and first quarter of 2013 (\$1,332.80). The base period wages for the fourth quarter of 2012 and first

quarter of 2013 were from *part-time* employment with Goodwill Industries of Central Iowa. Earlier in the employment at Goodwill, Mr. Hammadi's employment had been full time. Mr. Hammadi went to part-time status at Goodwill when he started going to school.

Mr. Hammadi started his summer term at Iowa Central Community College on May 12, 2014. The summer term ends on August 19, 2014.

After Mr. Hammadi separated from Goodwill in the first quarter of 2013, he did not have an additional employment until May 1, 2014, when he started part-time, on-call employment with Spirit Homecare, L.L.C. Mr. Hammadi's wage is \$11.00 per hour. The employment with Spirit Homecare had remained part time, on call. There have been no changes in the conditions of the employment since Mr. Hammadi started the employment.

Since Mr. Hammadi established the additional claim for benefits that was effective June 8, 2014, he has each week reported to Workforce Development \$88.00 in wages from work performed with Spirit Homecare. These weekly reports to Workforce Development have not correctly stated the wages from the employment. For the week ending June 14, Mr. Hammadi worked 16 hours and earned wages totaling \$176.00. For the week ending June 21, 2014, Mr. Hammadi did not perform any work and did not earn any wages. For the week ending June 28, Mr. Hammadi worked 16 hours and earned wages totaling \$176.00. For the weeks ending July 5 and 12, Mr. Hammadi did not perform any work and did not earn any wages. For the week ending July 19, 2014, Mr. Hammadi worked 16 hours and earned wages totaling \$176.00.

On June 13, 2014, a Workforce Development representative entered a reference 02 decision that stated Mr. Hammadi had met the \$250.00 minimum earnings requirement to be eligible for benefits in connection with a second benefit year and was eligible for benefits provided he met all other eligibility requirements. On June 19, 2014, a Workforce Development representative entered a reference 05 decision that duplicated the reference 02 decision.

On June 18, 2014, a Workforce Development representative entered a reference 03 decision that approved Mr. Hammadi for department approved training for the period of June 1, 2014 through August 23, 2014. On June 19, 2014, a Workforce Development representative entered a reference 06 decision that approved Mr. Hammadi for department approved training for the period of May 11, 2014 through August 23, 2014.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.]

The evidence in the record establishes that Mr. Hammadi continues in the employment with Spirit Homecare under the same conditions as existed at the start of that employment. Mr. Hammadi cannot be considered partially unemployed and would not be eligible for benefits if the only issue was whether he was partially unemployed. Spirit Homecare is not a base period employer. For that reason, and because Mr. Hammadi, is not partially unemployed from the employment, Spirit Homecare will not be charged for benefits in connection with the claim year that started for Mr. Hammadi on January 26, 2014 and that will end for him on January 24, 2015.

The fact that Mr. Hammadi is not partially unemployed from his part-time, as-needed, employment, does not prevent him from satisfying the able and available requirement. Mr. Hammadi's base period consisted of wages from part-time employment, not full-time employment. In June 2014, the agency entered decisions that found Mr. Hammadi had met the minimum earnings requirement to be eligible for benefits during a second benefit year. In addition, the agency entered decisions that approved Mr. Hammadi for department approved training effective May 11, 2014 and through August 23, 2014.

Iowa Code section 96.4(6)(a) provides as follows:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Iowa Administrative Code rule 871-23.43(7) echoes the statute as follows:

23.43(7) Department–approved training. A claimant who qualifies and is approved for department–approved training shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department–approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

Mr. Hammadi's approval for department approved training for the period of May 11, 2014 through August 23, 2014, exempts him from the work search and work availability requirement during that period. Mr. Hammadi is eligible for benefits effective June 8, 2014 and continues to be eligible for benefits provided he continues to meet the progress requirements of the department approved training.

Mr. Hammadi has not been accurately reporting his wages from Spirit Homecare. For the weeks ending June 14, June 28, and July 19, 2014, Mr. Hammadi worked 16 hours and earned wages totaling \$176.00. Because those weekly wages exceeded Mr. Hammadi's \$160.00 weekly benefit amount by more than \$15.00, Mr. Hammadi is not eligible for benefits for those weeks. For the weeks ending June 21, July 5 and 12, Mr. Hammadi did not perform any work and did not earn any wages. Mr. Hammadi is eligible for benefits for those weeks, provided he is otherwise eligible. Mr. Hammadi must accurately report his weekly wages as they are earned and not simply report an average weekly wage.

DECISION:

The claims deputy's July 1, 2014, reference 04, decision is modified as follows. The claimant has not been partially unemployed since he established the additional claim for benefits that was effective June 8, 2014. Spirit Homecare's account will not be charged for benefits while the claimant continues in the employment under the same conditions.

The claimant has been approved for department approved training that includes the period of June 8, 2014 through August 23, 2014. During that period, the claimant is exempted from the work availability and work search requirement, provided he continues to make satisfactory progress in the training and meets all other eligibility requirements. The claimant is eligible for benefits effective June 8, 2014 and continues to be eligible for benefits at this time, provided he meets all other eligibility requirements.

The claimant is not eligible for benefits for the weeks ending June 14, June 28, and July 19, 2014, because he weekly wages exceeded his weekly benefit amount by more than \$15.00. For the weeks ending June 21, July 5 and 12, the claimant had zero wages and was eligible for benefits, provided he was otherwise eligible.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has accurately reported his wages beginning with the benefit week that ended July 26, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css