

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN D THOMPSON
Claimant

APPEAL 17A-UI-00512-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLLAND CONTRACTING CORP
Employer

OC: 12/11/16
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 5, 2017, (reference 01) unemployment insurance decision that concluded the he was ineligible to receive unemployment insurance benefits since his hours and/or wages had not been reduced. The parties were properly notified of the hearing. A telephone hearing was held on February 6, 2017. The claimant participated and testified. The employer participated through Human Resource Manager Mandy Mikes.

ISSUES:

Was the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits effective December 11, 2016. At the time claimant filed for benefits he was still employed and working full-time with the employer, but anticipated a temporary lay-off the following month. Claimant thought when he was filing for benefits he was just getting his information into the system, so it would be ready the following month when he was laid off. Claimant continued to work full-time for the employer until the claim week beginning January 1, 2017. Claimant was temporarily laid off from work the week beginning January 1, went back to work the week beginning January 8, and then was temporarily laid off again for the claim weeks beginning January 15 and 22, 2017. Claimant returned to work full time for the employer the week beginning January 29 and continues to work full time for the employer. Claimant was paid \$161.52 in holiday pay for January 2, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is working the same hours as contemplated at the time of his hire but was temporarily laid off due to lack of work for three weeks in January 2017.

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 96.19, 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".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) 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.

In this case, claimant was hired to work for employer on a full-time basis. Claimant was temporarily laid off due to lack of work for the claim weeks beginning January 1, 15, and 22, 2017. Claimant was working full time for the employer from December 11, 2016 until his layoff the week of January 1 and has since returned to work and continues to work for employer on a full-time basis. Claimant filed his claim for benefits prematurely, in December 2016, under the mistaken belief that doing so would just get his information into the system in preparation for a January layoff.

DECISION:

The January 5, 2017, (reference 01) decision is modified in favor of the appellant. The claimant is still employed in his full-time position and was employed as such at the time of filing, but was laid off due to lack of work for three weeks in January. Claimant is therefore entitled to benefits for the claim weeks beginning January 1, 15, and 22, 2017, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid and shall be adjusted to account for the \$161.52 in holiday pay claimant received the claim week of January 1, 2017.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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