

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARQUE WILLIAMS

Claimant

APPEAL NO. 14A-UI-03182-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FINISH LINE

Employer

OC: 02/16/14

Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

Marque Williams filed a timely appeal from the March 19, 2014, reference 07, decision that denied benefits effective February 16, 2014 based on an agency conclusion that he was not partially unemployed from employer Finish Line. After due notice was issued, a hearing was held on April 15, 2014. Mr. Williams participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant was partially unemployed from his employment with Finish Line.

Whether the employer's account may be assessed for benefits paid to the claimant...

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marque Williams commenced his part-time employment with Finish Line in November 2013 and last performed work for that employer on April 13, 2014. Mr. Williams worked four days a week, approximately 16 hours per week. In early January 2014, the employer halved Mr. Williams' work hours to two shifts per week and approximately eight hours per week. Mr. Williams established a claim for unemployment insurance benefits that was effective February 16, 2014. Mr. Williams' weekly benefit amount was set at \$144.00. Between that date and the April 13, 2014 separation date, Mr. Williams did not refuse any work the employer had available for him. Between the effective date of the claim and the separation date, Mr. Williams' wages did not reach or exceed his weekly unemployment insurance benefit amount. Mr. Williams discontinued his claim for benefits after the benefit week that ended April 12, 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 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).

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 indicates that from February 16, 2014 until the April 13, 2014 separation date, the claimant was able and available for work, but partially unemployed from Finish Line. The claimant is eligible for benefits for the period of February 16, 2014 through the benefit week that ended April 12, 2014, provided he is otherwise eligible. Finish Line is not a base period employer and, therefore, will not be charged for benefits paid to the claimant for the period of February 16, 2014 through April 12, 2014.

This matter will be remanded to the Benefits Bureau for adjudication of the issues relating to the claimant's separation from Finish Line.

DECISION:

The claims deputy's March 19, 2014, reference 07, decision is modified as follows. From February 16, 2014 until the April 13, 2014 separation date, the claimant was able and available for work, but partially unemployed from Finish Line. The claimant is eligible for benefits for the period of February 16, 2014 through the benefit week that ended April 12, 2014, provided he is otherwise eligible. Finish Line is not a base period employer and, therefore, will not be charged for benefits paid to the claimant for the period of February 16, 2014 through April 12, 2014.

This is remanded to the Benefits Bureau for adjudication of the issues relating to the claimant's separation from Finish Line.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css