

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK ODOR
Claimant

APPEAL 22A-UI-07157-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERISTY OF IOWA
Employer

OC: 02/27/22
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) - Eligibility - A&A - Part-Time same Hours, Wages
Iowa Code § 96.1A(37) - Total, Partial and Temporary Unemployment
Iowa Code § 96.7(2)a(2) - Same Base Period Employment

STATEMENT OF THE CASE:

Claimant/appellant, Mark Odor, filed an appeal from the March 21, 2022, (reference 01) unemployment insurance decision finding he was not eligible for unemployment insurance benefits as of 02/27/22, due to his being still employed in his job at the same hours and wages. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 6, 2022. Claimant personally participated. Employer, The University of Iowa, participated through Scott Coons, party representative. Claimant attachments to his appeal were going to be admitted as C-1 and C-2, but employer's objection as to relevance, since they were for a different employer was sustained and therefore not admitted into evidence. Judicial notice was taken of the administrative file.

ISSUES:

Is the claimant able to work and available for work effective February 27, 2022?
Does the claimant meet the definition of being considered partially unemployed?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant's first day of work directly working for employer was September 28, 2021. Claimant continues to work for employer as of the time of the hearing, May 6, 2022. There have been no gaps in his employment, no quits, layoffs nor discharges. Claimant is a fulltime Clerk 3, with a set schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not a part-time employee, is not unemployed and remains working for employer and the employer is relieved of benefit charges.

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".

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. *Contribution rates based on benefit experience.*

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation

fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(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.

Iowa Admin. Code r. 871-24.1(139) provides in part:

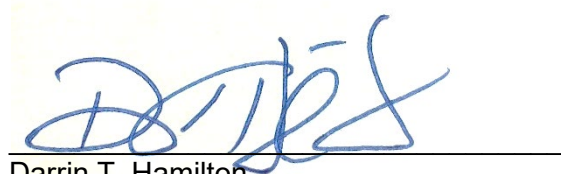
Week of unemployment. A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

Claimant is employed on a full-time and not a part-time basis. Furthermore, there is no period in which claimant meets the definition of totally, partially, or temporarily unemployed regarding employer, as he was continuously employed in a full-time capacity. There was not unemployment.

There were no benefits paid on this claim. There was no unemployment. As such, no benefit charges shall be made to employer's account.

DECISION:

The March 21, 2022, (reference 01) unemployment insurance decision denying benefits as of 02/27/22 is **AFFIRMED**. The account of employer, The University of Iowa, shall not be charged.



Darrin T. Hamilton
Administrative Law Judge

June 3, 2022
Decision Dated and Mailed

dh/scn