

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY K GRONEWOLD
Claimant

APPEAL NO. 09A-UI-05311-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OX YOKE INN INC
Employer

**Original Claim: 02/15/09
Claimant: Respondent (1)**

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 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2009, reference 01, decision that allowed benefits under a theory of partial unemployment. After due notice was issued, a hearing was held on May 1, 2009. Claimant Tracy Gronewold participated. Tanis Burrell of Unemployment Services/TALX represented the employer and presented testimony through Kathy Rasmussen, Controller, Lincoln Hinzman, Kitchen Supervisor, and Ron Goltz, General Manager. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and wages reported by the claimant. The administrative law judge took official notice of the April 6, 2009, reference 02, decision that denied benefits in connection with a March 19, 2009 voluntary quit. That decision became a final agency decision on April 16, 2009.

ISSUES:

Whether Mr.Gronewold has been able to work and available for work since establishing his claim for benefits.

Whether Mr. Gronewold was partially unemployed from his employment from February 15, 2009 until his separation from the employment on March 19, 2009.

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

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracy Gronewold was employed by the Ox Yoke Inn as a cook/kitchen helper from January 16, 2003 until March 19, 2009, when he voluntarily quit. Mr. Gronewold was hired as a full-time worker and continued as a full-time worker until November 2008, when he suffered a heart attack. In

his "full-time" status, Mr. Gronewold received 30-32 hours per week. In November, Mr. Gronewold commenced an approved medical leave of absence under the Family and Medical Leave Act.

Mr. Gronewold returned to the employment on February 13, 2009. During the two-week pay period that ended February 15, Mr. Gronewold worked three shifts in three days, or 18.47 hours. During the next two-week pay period, February 16 through March 1, Mr. Gronewold worked 30.8 hours and was paid 15 hours sick leave. Mr. Gronewold was compensated for 45.8 hours. Mr. Gronewold had been absent due to illness on February 27 and 28. During the next two-week pay period, March 2-15, Mr. Gronewold worked 37.75 hours and was absent for one shift on March 2 due to illness. Mr. Gronewold was absent from a shift on March 10 due to transportation. During the final pay period that began March 16, Mr. Gronewold worked 13.02 hours before he quit an hour into his shift on March 19.

While the employer experiences a seasonal decline in business during the first few months in the year, Mr. Gronewold had consistently enjoyed 30-32 hours per week prior to his medical leave of absence.

Mr. Gronewold established a claim for benefits that was effective February 15, 2009 and received benefits totaling \$524.00 for the period of February 15, 2009 through March 14, 2009.

On April 6, 2009, a Workforce Development claims representative entered a decision that denied benefits in connection with the March 19, 2009 separation from the employment. Mr. Gronewold did not appeal that decision and the decision became a final agency decision on April 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

Because Mr. Gronewold did not appeal the April 6, 2009, reference 02, decision that denied benefits in connection with the March 19, 2009 separation, and because that decision became a final agency decision, the issues in the present case are limited to Mr. Gronewold's availability before the quit, to the issue of partial unemployment before the quit, and to the employer's liability for benefits disbursed for the period before the quit. See Iowa Code section 96.6.

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).

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. Iowa Code section 96.7 (2)(a)

The weight of the evidence indicates that for the period of February 15, 2009 through March 19, 2009, the employer was not providing Mr. Gronewold with the same number of hours he had consistently enjoyed prior to the medical leave. The evidence indicates that that Mr. Gronewold's absences due to illness did not prevent him from being available for the majority of the affected weeks. Mr. Gronewold's March 10 absence did not prevent him from being available for the majority of that week. The reduction in hours was not attributable to the change in seasons. Mr. Gronewold was eligible for the benefits he received for the period of February 15, 2009 through the week that ended March 14, 2009. The employer's account may be charged for those benefits.

DECISION:

The Agency representative's March 23, 2009, reference 01, is affirmed. The claimant was partially unemployed during the period of February 15, 2009 until he quit on March 19, 2009. The claimant was available for work during that period. The claimant was eligible for the benefits he received for the period of February 15, 2009 through the week that ended March 14, 2009. The employer's account may be charged for those benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw