

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TED L BROWN
Claimant

DEERE & COMPANY
Employer

APPEAL 22A-UI-00356-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/23/21
Claimant: Appellant (5)

Iowa Code § 96.5(4) – Labor Disputes

STATEMENT OF THE CASE:

On December 1, 2021, Ted Brown (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute.

A telephone hearing was held on January 26, 2022. The parties were properly notified of the hearing. The claimant participated personally. Deere & Company (employer/respondent) did not participate. Official notice was taken of the administrative record.

ISSUES:

- I. Is the claimant disqualified from benefits due to a labor dispute?
- II. Was the claimant able to and available for work?
- III. Was the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on August 21, 2002. Claimant works for employer as a full-time warehouseman. Claimant works in department 40A at employer's Ankeny location. Claimant performed work in this position until October 14, 2021. At that time a labor dispute concerning the terms and conditions of employment began.

Claimant is not a union member. There was no work available to claimant during the work stoppage. Claimant was not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work. Salaried workers from other departments temporarily performed at least some of claimant's work during the period of the labor dispute.

Claimant does belong to a class of workers which were employed at the premises where the stoppage occurred immediately before the commencement of the stoppage and who were participating in or directly interested in the dispute.

The labor dispute ended on November 20, 2021. Claimant returned to his previous position on or about that date. Claimant has been employed in that position since the labor dispute ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is MODIFIED with no change in effect.

Iowa Code section 96.5(4) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

4. Labor disputes.

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Iowa Admin. Code r. 871-24.33(1) provides:

As used in sections 96.5(3) "b"(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

Iowa Admin. Code r. 871-24.34 provides in part:

Labor dispute—policy.

(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

A claimant is disqualified from unemployment insurance benefits during a work stoppage caused by a labor dispute. A work stoppage due to a labor dispute must be the cause of unemployment to result in the striking worker's disqualification from receiving unemployment benefits. *Titan Tire Corp. v. Employment Appeal Bd.*, 641 N.W.2d 752 (Iowa 2002). There is an exception to this disqualification if the claimant is not financing, participating in, or directly interested in the labor dispute **AND** does not belong to a class of workers who are financing, participating in, or directly interested in the labor dispute. See Iowa Code 96.5(4)(a).

There is little guidance in Iowa statutes, administrative regulations, or case law as to what constitutes "participating in or financing or [being] directly interested in the dispute" within the meaning of the statute at issue. However, the plain meaning of "interest" supports a finding that at minimum others in claimant's class of workers who were on strike were "interested in the labor dispute." See INTEREST, Black's Law Dictionary (11th ed. 2019) (defining interest as "the object of any human desire; esp., advantage or profit of a financial nature."). The evidence also supports a finding that others in claimant's class of workers were participating in the labor dispute by going on strike.

Case law from the Illinois Appellate Court, while not binding here, is persuasive. The Illinois corollary to the Iowa statute also provides that claimants are "ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute..." It also provides an exception where:

(A) the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and

(B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute

820 Ill. Comp. Stat. Ann. 405/604. In a similar case to the one at hand, the Illinois Appellate Court held that an employee who was not a union member was ineligible for unemployment benefits during a work stoppage caused by a labor dispute, where union members of his grade or class were on strike and therefore participating in and interested in the labor dispute. *Boone v. Dep't of Lab.*, 495 N.E.2d 66, 68 (1986). Because the court found claimant belonged to an interested grade or class of workers it did not reach the issue of whether the claimant was himself directly interested in the labor dispute due to his receiving an increase in wages and benefits as a result of the strike. *Id.*

The administrative law judge finds employer has carried its burden of proving claimant's unemployment was due to a work stoppage caused by a labor dispute. Specifically, the stoppage of work began at claimant's work location due to an employee strike concerning the terms and conditions of their employment. The administrative law judge further finds other employees in claimant's grade or class of workers were participating in and interested in the labor dispute because they were taking part in a strike that concerned their pay and benefits.

The administrative law judge notes claimant argued in part that there was not a work stoppage because salaried workers from other departments temporarily performed at least some of claimant's work during the period of the labor dispute. The Iowa Supreme Court has held that a

stoppage of work occurs even if employer keeps operating by replacing employees of the striking department with employees of other departments. *Crescent Chevrolet v. Iowa Dep't of Job Serv.*, 429 N.W.2d 148, 152 (Iowa 1988). It has further held that only where employees are permanently replaced and there is no longer work available to them does the labor dispute and the consequent work stoppage cease to be the cause of a claimant's unemployment. *Titan Tire Corp. v. Emp. Appeal Bd.*, 641 N.W.2d 752, 757 (Iowa 2002). In such a case the employer is considered to have separated claimant from employment. The administrative law judge therefore finds there was a work stoppage in claimant's department despite claimant being temporarily replaced by employees of another department. The administrative law judge further finds claimant was not separated from employer but remained attached to it during the labor dispute, as he was not permanently replaced.

It is unnecessary to reach the issue of whether claimant was financing, participating in, or directly interested in the labor dispute. Because claimant's unemployment was due to a work stoppage caused by a labor dispute and claimant does not meet both prongs of the statutory exemption to disqualification, benefits must be denied during the period of unemployment caused by the labor dispute. Because claimant is disqualified during this period, the other issues noticed need not be addressed.

DECISION:

The decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is MODIFIED with no change in effect. Benefits must be denied, and employer's account shall not be charged.

The decision is modified solely to correct the portion of the decision which refers to claimant's employer as Lozier Corporation. Claimant's employer is Deere & Company.



Andrew B. Duffelmeyer
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February 14th, 2022
Decision Dated and Mailed

abd/abd