

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J GRAY

Claimant

APPEAL NO: 14A-UI-02080-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE

Employer

OC: 01/12/14

Claimant: Respondent (4/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed a representative's February 14, 2014 decision (reference 03) that concluded Andrew J. Gray (claimant) was qualified to receive unemployment insurance benefits as not working under his same hours and wages. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Donald Rogerson appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 19, 2012 on a part-time basis. As of November 19, 2013 he began working full time, first on a seasonal basis, and as of January 9, 2014 on a permanent basis. He works as a package driver out of the employer's Red Oak, Iowa package center. His rate of pay is \$17.25 per hour. Agency records indicate that prior to the fourth quarter 2013 the claimant's employment with the employer was at most about 12 hours per week.

The claimant established an unemployment insurance benefit year effective January 12, 2014. Based on his high quarter average weekly wage of \$860.31 his weekly benefit was set as \$439.00 per week, based substantially on other employment the claim held through the second quarter 2013. The claimant began making weekly continued claims, but as of the date of the

hearing there were only two weeks in which his reported earnings were less than \$454.00 (\$439.00 + \$15.00); these were the weeks ending February 8 and March 8, 2014.

For the week ending February 8 the claimant reported wages of \$410.00. This corresponds to the employer's records indicating the claimant worked 23.77 hours on three days that week. The employer asserts that additional hours would have been available that week had the claimant exercised his bumping rights to bump part-time employees with less seniority.

For the week ending March 8 the claimant reported no wages earned. However, the employer's records indicate that the claimant worked 9 hours and 13 minutes on March 3, and 9 hours and 26 minutes on March 4. Further, the reason the claimant did no work on March 5, March 6, and March 7 was that he called in absences due to illness those days; work would have been available for the claimant had he not called in.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he has been permanently or temporarily separated from one employer and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during his base period and remains in that employment, he continues to be eligible for benefits as long as he is receiving at least the same employment from the part-time employer that he received during the base period. However, under those circumstances the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a. The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2012 and ended September 31, 2013. The claimant's employment with the employer during this period was part-time and secondary to his other employment.

The claimant was separated from his prior regular full-time employer in the second quarter 2013. He continues to work for his prior part time, now full time, other base period employer. Since the claimant established his claim for benefits effective January 12, 2014, the employer was providing the claimant with the same or more employment as it provided during his base period. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective January 12, 2014, provided he was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with at least the same part-time employment it provided during his base-period.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has

been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to him. Rather, he must remain available for overall work on the same basis as when he was previously working for all employers. Iowa Code § 96.4-3; 871 IAC 22(2)(a).

The reason the claimant's earnings for the week ending February 8, 2014 were below the \$454.00 partial eligibility level is because he did not exercise his seniority rights to bump other employees. He was not able and available to work the number of hours the employer had available to him, and he is thus ineligible for unemployment insurance benefits for that week. 871 IAC 24.23(29).

The reason the claimant's earnings for the week ending March 8, 2014 were below the \$454.00 partial eligibility level is because he called in sick the major portion of the work week. He was not able and available to work the number of hours the employer had available to him, and he is thus ineligible for unemployment insurance benefits for that week. 871 IAC 24.23(29).

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The unemployment insurance decision dated February 14, 2014 (reference 03) is modified in favor of the employer. The claimant is theoretically eligible for partial unemployment insurance benefits, provided he is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant. However, because the claimant was not able and available for work, he was not eligible to receive unemployment insurance benefits for the weeks ending February 8 and March 8, 2014. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css