

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRIS L STOWE
Claimant

APPEAL NO. 18A-UI-01394-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENOX INDUSTRIES INC
Employer

OC: 12/24/17
Claimant: Appellant (2R)

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code section 96.19(38)(c) – Temporary Layoff
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Chris Stowe filed a timely appeal from the January 26, 2018, reference 01, decision that denied benefits effective December 24, 2017, based on the Benefits Bureau deputy's conclusion that Mr. Stowe was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 26, 2018. Mr. Stowe participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO) and of the weekly claim for the benefit week that ended December 30, 2017 (KCCO).

ISSUES:

Whether Mr. Stowe was able to work and available for work within the meaning of the law during the benefit week that ended December 30, 2017.

Whether Mr. Stowe was partially unemployed or temporarily unemployed during the benefit week that ended December 30, 2017.

Whether the employer's account may be assessed for benefits for the benefit week that ended December 30, 2017.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chris Stowe began his employment with Lennox Industries, Inc. in 2010 and continues in his full-time employment as a machine operator in the cooling department. Mr. Stowe's regular work hours are 7:00 a.m. to 3:30 p.m. Mr. Stowe is also required to perform overtime work when notified by the employer. Mr. Stowe's hourly wage is \$17.11.

The employer did not have work for Mr. Stowe during the week of December 24-30, 2017. On Monday, December 25, 2017, and Tuesday, December 26, 2017, the employer's plant was

closed in connection with the Christmas holiday. During the remainder of the regular work week, December 27, 28 and 29, 2017, the employer did not operate the cooling department. Mr. Stowe was fully able to work that week and available for work that week.

During the pay period that immediately proceeded the Christmas holiday, the employer paid out to Mr. Stowe three days' worth of vacation pay benefits for December 27, 28 and 29, 2017, Wednesday through Friday. Mr. Stowe did not request to use the vacation pay. Each year, the employer requires that Mr. Stowe set aside three days of vacation pay to be used during the holiday shutdown period.

Mr. Stowe established an original claim for unemployment insurance benefits that was effective December 24, 2017. Iowa Workforce Development set Mr. Stowe's weekly benefit amount at \$473.00. On December 31, 2017, Mr. Stowe made a weekly claim for the benefit week that ended December 30, 2017. Mr. Stowe reported holiday pay of \$250.00 for the benefit week for the 16 hours of holiday pay he received for December 25 and 26, 2017. Based on Mr. Stowe's \$17.11 hourly wage, the correct report for the 16 hours of gross holiday pay would have been \$273.76. Mr. Stowe returned to full-time work at Lennox Industries during the week of December 31, 2017 through January 6, 2018. Mr. Stowe discontinued his unemployment insurance claim following the benefit week that ended December 30, 2017.

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).

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 96.19(38)(c).

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 in the record establishes that Mr. Stowe was able to work, available for work, but temporarily unemployed during the week of December 24-30, 2017. The temporary unemployment was based on the employer temporarily shutting down work in Mr. Stowe's department. Mr. Stowe is eligible for benefits for the week that ended December 30, 2017, provided he is otherwise eligible. The employer's account may be assessed for benefits for that week.

This matter will be remanded to the Benefits Bureau for determination of whether Mr. Stowe received vacation pay benefits that are deductible from his unemployment insurance benefit eligibility for the week that ended December 30, 2017. The remand determination should also factor the \$273.76 in holiday pay that Mr. Stowe received for December 25 and 26, 2017.

DECISION:

The January 26, 2018, reference 01, decision is reversed. The claimant was able to work, available for work, but temporarily unemployed during the week of December 24-30, 2017. The claimant is eligible for benefits for the week that ended December 30, 2017, provided he is otherwise eligible. The employer's account may be assessed for benefits for that week.

This matter is remanded to the Benefits Bureau for determination of whether the claimant received vacation pay benefits that are deductible from his unemployment insurance benefit eligibility for the week that ended December 30, 2017. The remand determination should also factor the \$273.76 in holiday pay that the claimant received for December 25 and 26, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs