

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J SCHAUB

Claimant

APPEAL NO: 12A-UI-08079-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREY CLEANING SYSTEMS

Employer

OC: 06/10/12

Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Employer Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 3, 2012, reference 02, that held the claimant was eligible for benefits effective June 10, 2012, and the employer was denied a relief of charges. A telephone hearing was held on July 30, 2012. The claimant did not participate. The claimant's wife, Dana Schaub, participated on his behalf. Robert Carey, President, and John Haag, Shop Supervisor, participated for the employer.

ISSUES:

The issue is whether the claimant is able and available for work.

The further issue is whether the employer should be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work for the employer as a full-time body shop tech with some other work duties beginning August 26 2011. The employer notified claimant of a temporary lay-off on Saturday June 16, 2012 due to a work slow-down. Claimant was one of three workers who experienced this event and the employer had tried to find work for them around the shop that included installing a new paint booth.

Claimant filed an unemployment claim on the day of his lay-off that reverts to the previous Sunday (June 10) by operation of law. He reported his weekly earnings up to June 16 in the amount of \$142.00 and received a partial benefit. He last performed some one-day work on June 19. The employer was not successful in communicating further work to claimant.

Claimant began his work search for full-time employment. He picked-up his tool box on July 13 and began full-time employment on or about July 15. He ceased claiming for benefits.

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".

The administrative law judge concludes claimant is eligible for benefits due to a temporary lay-off that began on June 16, 2012 where he was able and available for full-time work, such that no disqualification is imposed.

The employer admits it told claimant he was temporarily laid-off on Saturday June 16 and his unemployment claim reports \$142.00 wages for that week. If the employer has an issue with claimant earnings as to this or any other week during the period he claimed benefits (June 10 - July 14), it can provide that information to the department Investigation and Recovery Unit.

The claimant cannot be faulted for being told he was laid-off and then expect to be called in for a day or two of work without proper notice. The record is the employer was not successful in reaching claimant to communicate further work.

Iowa Code section 96.7-2-a(2) 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.

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.

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.

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.

The administrative law judge further concludes that the employer is not entitled to a relief of benefit charges pursuant to the law section cited above, because claimant was not receiving the same employment in June 2012 as he was in his base period.

DECISION:

The department decision dated July 3, 2012, reference 02, is affirmed. The claimant is able and available for full-time work, and eligible for benefits effective June 10, 2012. The employer is not granted a relief from said charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css