

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY F NOVOSELAC**  
Claimant

**APPEAL NO. 15A-UI-10180-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 08/16/15**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages

**STATEMENT OF THE CASE:**

Gary Novoselac filed a timely appeal from the September 10, 2015, reference 01, decision that denied benefits effective August 16, 2015, based on an Agency conclusion that he was not partially unemployed from his employment at Lowe's Home Centers. After due notice was issued, a hearing was held on September 23, 2015. Mr. Novoselac participated. The employer provided written notice that the employer waived its participation in the hearing. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing the claim for benefits that was effective August 16, 2015.

Whether the claimant has been partially unemployed since establishing the claim for benefits that was effective August 16, 2015.

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gary Novoselac established a claim for benefits that was effective August 16, 2015, but has not received benefits in connection with the claim. Mr. Novoselac's current employer, Lowe's Home Centers, is not a base period employer for purposes of the claim year that started for Mr. Novoselac on August 16, 2015. Rather, the base period employers are William Burke, Ltd. and Quad Cities Automotive Group, L.L.C. Mr. Novoselac's weekly benefit amount in connection with the August 16, 2015 claim is set at \$170.00. Since Mr. Novoselac established his claim, he has reported his wages from the Lowe's employment as follows:

<u>Benefit week end date</u>	<u>Wages Reported</u>
10/03/15	117
09/26/15	234
09/19/15	137
09/12/15	119
09/05/15	197
08/29/15	119
08/22/15	179

Mr. Novoselac began his employment with Lowe's in April 2015 and has worked as a part-time customer service associate. At the time of hire, the employer told Mr. Novoselac that he could expect to receive 10 to 25 hours per week. The employer has continued to offer employment within those parameters. Mr. Novoselac's hourly wage from the employment is \$11.68.

In August 2014, Mr. Novoselac had established an original claim for benefits in response to a reduction in work hours, from full-time to permanent part-time, at his then employer, William Burke, Ltd. That employer subsequently placed Mr. Novoselac in an on-call position. Workforce Development records indicate that Mr. Novoselac last performed on-call work for William Burke, Ltd., during the first quarter of 2015. William Burke has not protested Mr. Novoselac's claims for benefits despite receiving multiple notices of claim.

Mr. Novoselac is a retired person and receives Social Security 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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).

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. Novoselac has not been partially unemployed from Lowe's at any point since he established the new original claim for benefits that was effective August 16, 2015. Mr. Novoselac has continued to receive the same work from Lowe's accordingly. Thus, Mr. Novoselac would not be eligible for benefits under that theory that he is partially unemployed from Lowes.

The evidence indicates that Mr. Novoselac's former employment with William Burk, Ltd., transitioned from full time to part time and then to part time on-call, all during the previous claim year. Mr. Novoselac's employment history has consisted of part-time employment since that time and the base period wage credits for the new benefit year are based on a history of part-time employment. The part-time employment at Lowe's replaced what had become part-time employment at William Burke, Ltd. The two employments were not concurrent. Thus, the employment at Lowe's cannot be deemed part-time supplemental. See 871 IAC 23.43(4)(a). The evidence in the record does not support Mr. Novoselac's assertion that he should be considered available for work, but partially unemployed in the new claim year based on his relationship with William Burke, Ltd. Benefits are denied effective August 16, 2015.

**DECISION:**

The September 10, 2015, reference 01, is affirmed. The claimant is not eligible for benefits under a theory of partial unemployment either from the current or from a now former employer. Benefits are denied effective August 16, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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