

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN L JOHNSON
Claimant

REFRACTORY & INSULATION SUPPLY INC
Employer

APPEAL 21A-UI-11338-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Respondent (2)

Iowa Code § 96.1A (37) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Refractory & Insulation Supply, Inc., the employer/appellant, filed an appeal from the April 6, 2021, (reference 01) unemployment insurance decision that allowed benefits as of March 7, 2021. The parties were properly notified about the hearing. A telephone hearing was held on July 9, 2021. The employer participated through Heather Barron, accountant. Mr. Johnson did not register for the hearing and did not participate. Official notice was taken of the administrative record.

ISSUES:

Is Mr. Johnson partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Johnson began working for the employer on Nov 20, 2017. He worked as a part-time on-call construction laborer.

Mr. Johnson worked for the employer from January 26, 2021 through January 28, 2021. The employer did not have work available again until March 2021. Mr. Johnson was scheduled to work from March 21 through March 31. On March 18, the employer learned from another employee that Mr. Johnson had been arrested on March 17 and he was incarcerated. Mr. Johnson called the employer sometime during the week of March 21-27 to let the employer know that he would not be able to work March 21 through March 31 because he was incarcerated. At some point after March 31, Mr. Johnson told the employer that he was no longer incarcerated and could work again. Mr. Johnson worked for the employer again on June 26.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Johnson is not available to work from March 17, 2021 through March 31, 2021, and he is otherwise still employed with this employer at the same hours and wages as in his original contract of hire.

Iowa Code § 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".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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 Admin. Code r. 871-24.23 (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(12) If a claimant is in jail or prison, such claimant is not available for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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

(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.

In this case, Mr. Johnson was incarcerated from March 17, 2021 through March 31, 2021. He was not available to work during this time. Other than March 17 through March 31, as of March 7, 2021, Mr. Johnson is still employed with this employer at the same hours and wages as in his original contract of hire. Benefits are denied.

DECISION:

The April 6, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Johnson was not available to work from March 17, 2021 through March 31, 2021 and he is otherwise is still employed with this employer at the same hours and wages as in his original contract of hire. Benefits are denied.



Daniel Zeno
Administrative Law Judge

July 20, 2021
Decision Dated and Mailed

dz/ol