

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK S SARGENT
Claimant

YRC INC
Employer

APPEAL 19A-UI-08329-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/24/19
Claimant: Respondent (1)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On October 24, 2019, YRC, Inc. (employer) filed an appeal from the October 15, 2019, reference 05, unemployment insurance decision that allowed benefits based upon the determination Nick S. Sargent (claimant) was partially unemployed and available for his normal hours of work. After due notice was issued, a telephone conference hearing was held on November 18, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Skyler Wirtz, Terminal Manager, and Joe Freeman, Senior Dispatcher. The employer's offered exhibit was excluded on the basis of relevance as it addressed the claimant's separation from employment which was not an issue in this hearing.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired on March 29, 2018 to work as a full-time employee with a guaranteed 40 hours of work a week. The claimant filed his original claim for benefits effective March 24, 2019 and his weekly benefit amount is \$467.00. At that time, the employer moved the claimant to a full-time position with varied hours per the collective bargaining agreement (CBA).

The week of September 15, 2019, the claimant worked only 10.62 hours, earning \$23.11 an hour, as the employer did not have full-time hours available for him as contemplated in the original contract of hire. He reactivated his claim for benefits and reported wages earned in the amount of \$272.00. The claimant received \$311.00 in unemployment insurance benefits.

The claimant has not filed for benefits after the week ending September 21 and his claim is currently inactive. The claimant separated from employment on October 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the one week ending September 21, 2019.

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".

Iowa Code section 96.19(38) provides:

Definitions.

38. 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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

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.

(b) 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.

(c) 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.

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

During the week ending September 21, 2019, the claimant was not currently employed under the same hours and wages as contemplated at hire. The wages he earned that week were less than his weekly benefit amount plus fifteen dollars. The claimant was partially unemployed and benefits are allowed. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

The claimant has not filed for benefits after the week ending September 21 and his claim is currently inactive. The claimant separated from employment on October 1. If the claimant

reactivates his claim for benefits or files a new claim for benefits next year, the employer will have the opportunity to address the separation at that time.

DECISION:

The October 15, 2019, reference 05, unemployment insurance decision is affirmed. The claimant was partially unemployed and benefits are allowed, provided he is otherwise eligible. He is required to report gross wages earned for each week of benefits claimed. The employer's account (015080) may be liable for charges.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn