

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES H LYON

Claimant

APPEAL NO. 13A-UI-08581-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOFFMANS AMIEL INC

SANITARY REFUSE GARBAGE SERVICE

Employer

OC: 08/26/12

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

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

Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

James Lyon filed a timely appeal from the July 18, 2013, reference 01, decision that denied benefits effective June 16, 2013 based on an agency conclusion that he was not partially unemployed. After due notice was issued, a hearing was held on August 28, 2013. Mr. Lyon participated. Bob Hill represented the employer. The administrative law judge took official notice of the agency's administrative record (DBRO) regarding the claimant's weekly benefit amount and reported wages.

ISSUES:

Whether Mr. Lyon has been partially unemployed since he established the additional claim for benefits that was effective June 16, 2013.

Whether Mr. Lyon has been able to work and available for work within the meaning of the law since he established the additional claim for unemployment insurance benefits that was effective June 16, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Lyon has been employed by Sanitary Refuse Garbage Service as a refuse truck driver since 2003. For the last two years, the employment had been part-time, 15 hours per week. The wage for that work has been \$150.00 per week, which works out to \$10.00 per hour. The employer has not reduced the wages or the number of hours it has for Mr. Lyon. Mr. Lyon's begrudges owner Bob Hill's decision to perform any additional necessary work himself, rather than give that additional work to Mr. Lyon.

Mr. Lyon established an additional claim for benefits that was effective June 16, 2013. Mr. Lyon's weekly benefit amount is set at \$86.00. Mr. Lyon has attempted to claim benefits for each week since the effective date of his claim. For each week, he has reported \$150.00 in

wages. Since Mr. Lyon established the additional claim for benefits, he had not refused any work from the employer. In addition to the part-time employment, Mr. Lyon engages in multiple self-employment ventures that take about 10 hours per week collectively.

Mr. Lyon's base period consists of the second, third and fourth quarters of 2011 and the first quarter of 2012. This employer is the sole base period employer. The wages paid for the respective quarters were \$1,985.00, \$2,000.00, \$1,950.00, and \$1,950. Mr. Lyon's wages for the second, third and fourth quarters of 2012 and for the first and second quarters of 2013 have been \$1,650.00, \$2,010.00, \$2,000.00, \$1,970.00, and \$1,990.00.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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 indicates that there has been no decrease of wages or hours since the second quarter of 2011. In addition, Mr. Lyon's weekly wages since he filed his additional claim for benefits have exceeded his weekly benefit amount plus \$15.00. Mr. Lyon has not been partially unemployed since he filed his claim for benefits and is not eligible for benefits under a theory of partial unemployment. Benefits are denied effective June 16, 2013 and the ineligibility continued as of the August 28, 2013 appeal hearing. Because Mr. Lyon has not been partially unemployed, the employer's account will not be charged for benefits so long as Mr. Lyon continues in the employment under the same conditions.

Since Mr. Lyon established his additional claim for benefits, he has been available for work to the same extent as during his base period. For that reason, he is available for work within the meaning of the law, despite the additional self-employment.

DECISION:

The agency representative's July 18, 2013, reference 01 is affirmed. The claimant has not been partially unemployed since he filed the additional claim for benefits that was effective June 16, 2013. Benefits are denied effective June 16, 2013. This ineligibility continued as of the time of the August 28, 2013 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs