

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD L MORRIS
Claimant

APPEAL NO. 10A-UI-01028-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEIBERT TRUCKING INC
Employer

OC: 11/15/09
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Ronald Morris filed a timely appeal from the January 12, 2010, reference 01, decision that denied benefits based on an Agency conclusion that he did not meet the work availability requirements of Iowa Code section 96.4(3). After due notice was issued, a hearing was held on March 1, 2010. Mr. Morris participated. Debra Seibert, President, represented the employer.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronald Morris started working for Seibert Trucking, Inc., in August 2009. Mr. Morris was hired to perform part-time dump truck driving, over-the-road driving, and snow removal duties. At the beginning of the employment, Mr. Morris averaged 30 hours per every two-week pay period.

Mr. Morris established a claim for unemployment insurance benefits that was effective November 15, 2009. During the week that ended November 21, 2009, the employer had no work hours for Mr. Morris. This was due in part to a customer notifying the employer it no longer wanted to use Mr. Morris after Mr. Morris refused to dump a load. During the week that ended November 28, 2009, the employer again had no hours for Mr. Morris. During the week that ended December 5, 2009, Mr. Morris worked 8 hours. During the week that ended December 12, 2009, the employer had no work hours for Mr. Morris. During the week that ended December 19, 2009, Mr. Morris performed 14 hours of snow removal work for the employer. During the week that ended December 26, 2009, Mr. Morris worked 13.75 hours. During the week that ended January 2, 2010, Mr. Morris worked 7 hours. During the week that ended January 9, 2010, Mr. Morris worked 4.25 hours. During the week that ended January 16, 2010, Mr. Morris worked 4 hours. Mr. Morris took time off from work for a court appearance on

January 13, 2010. During week that ended January 23, 2010, Mr. Morris worked 10.75 hours. During the week that ended January 30, 2010, Mr. Morris worked 12.5 hours. During the week that ended February 6, 2010, the employer had no hours for Mr. Morris. During the week that ended February 13, 2010, Mr. Morris worked 9 hours for the employer. Mr. Morris took time off from work on February 12, 2010 for a court appearance. During the week that ended February 20, 2010, Mr. Morris hauled a load to Kansas for the employer. Mr. Morris and his co-driver then refused to wait in Kansas while the employer found a load for the return trip to Iowa and returned to Iowa without a return load. At the time of the March 1, 2010 appeal hearing, Mr. Morris had not performed additional work for the employer since the week that ended February 20, 2010.

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 weight of the evidence establishes that the claimant has been partially unemployed from this employer since he established his claim for unemployment insurance benefits. Accordingly, the claimant is eligible for benefits based on a theory of partial unemployment, provided he is otherwise eligible. The claimant is required to report his gross wages to Workforce Development for each week that he claims unemployment insurance benefits. The claimant is not performing the same amount of work since he established his claim for benefits as he performed under the original conditions of employment. However, the employer is not a base period employer and, therefore, will not be charged for benefits paid to the claimant during the benefit year that started November 15, 2009 and that will end on or about November 14, 2010.

The claimant's base period wage credits suggest a history of very part-time employment—in other words, a casual relationship with the labor market. The Agency's record of wages reported by the claimant suggests that that work has picked up and that the claimant's hours have increased since the March 1, 2010 appeal hearing. This matter will be remanded to the Claims Division for determination of whether the claimant has been able & available for work and/or partially unemployed since the March 1, 2010.

In the event the claimant's separates from the employment, the employer should promptly report the separation to Workforce Development so that the Agency may determine the effect of the separation on the claimant's eligibility for benefits.

DECISION:

The Agency representative's January 12, 2010, reference 01, is reversed. The claimant has been partially unemployed from his part-time employment since he established his claim for benefits. Effective November 15, 2009, the claimant is eligible for benefits under a theory of partial unemployment, provided he meets all other eligibility requirements. The employer is not a base period employer and the employer's account will not be charged for benefits paid during the current benefit year.

This matter is remanded to the Claims Division for determination of whether the claimant has been able and available for work and/or partially unemployed since the March 1, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css