

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD C PETERSON**  
Claimant

**APPEAL NO. 11A-UI-11418-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**690 PAYROLL INC**  
Employer

**OC: 07/10/11**  
**Claimant: Respondent (4)**

Section 96.4-3 – Able and Available  
Section 96.7-2-a(2) – Employer Relief of Charges

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 19, 2011, reference 05, that held the claimant was eligible for benefits effective July 10, 2011, as an on-call worker. A telephone hearing was held on September 21, 2011. The claimant participated. Richard Vest, director, participated for the employer. Employer Exhibits A through G were received as evidence.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The further issue is whether the employer should be relieved of benefit charges.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working for the employer in February 2002 as an on-call worker to perform stagehand job as needed. The employer contacts Local Union 690, which covers the University of Iowa area, and it provides work to members on an on-call basis. A worker may accept or decline an on-call assignment. Claimant has worked this pattern of employment through the date of this hearing.

When claimant filed an unemployment claim effective March 18, 2007, the department issued an April 4 decision that he was eligible for benefits and the employer was relieved of benefit charges. When claimant filed an unemployment claim effective June 14, 2009, the department issued a July 13 decision he was eligible for benefits and the employer was relieved of benefit charges.

Claimant filed his unemployment claim due to a concern about continuing work for Venuworks of CR (er#318569). This employer closed a building and shifted the work crew, which caused claimant to believe he would lose work.

## 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".

The administrative law judge concludes that the claimant is able and available for work for the employer on the same part-time basis since February 2002 to the present, July 10, 2011, and no disqualification is imposed.

The claimant has continued to work on-call for the employer whenever work is available through his Local Union through the date of this hearing. The claimant is receiving the same employment with employer now as he has in the base period.

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

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.

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.

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.

The administrative law judge further concludes that the employer is entitled to a relief of benefit charges pursuant to the law section cited above.

**DECISION:**

The department decision dated August 19, 2011, reference 05, is modified in favor of the employer. The claimant is able and available for work, and eligible for benefits effective July 10, 2011, and the employer is granted a relief from said charges.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw