

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN D VAN SICKLE

Claimant

APPEAL NO. 15A-UI-04779-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 12/14/14

Claimant: Respondent (5/R)

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:

The employer filed a timely appeal from the April 15, 2015, reference 05, decision that allowed benefits to the claimant effective March 22, 2015 provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on June 1, 2015. Claimant Bryan Van Sickle participated. Julia Coughlin represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO). Exhibits One through Four were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since establishing the additional claim for benefits that was effective March 22, 2015.

Whether the claimant has been partially or temporarily unemployed since establishing the additional claim for benefits that was effective March 22, 2015.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning March 22, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Remedy Intelligent Staffing, Inc., is a temporary employment agency that provides temporary workers to General Mills and other client businesses. Claimant Bryan Van Sickle began his employment relationship with Remedy in 2012 and performed work at General Mills on behalf of Remedy until March 8, 2015, when General Mills and Remedy ended his assignment due to a personality conflict between Mr. Van Sickle and a supervisor. In the assignment at General Mills, Mr. Van Sickle had earned \$13.00 per hour when working as a backup supervisor and \$10.00 per hour when performing his regular duties. When Mr. Van Sickle worked on Saturdays, he would receive time and a half pay and when he worked Sundays he would receive double pay.

Mr. Van Sickle made a point of making himself available for weekend work, but that work was eliminated toward the end of the General Mills assignment, resulting in a decrease in weekly wages while Mr. Van Sickle was still in the assignment. Remedy placed the claimant in a new temporary work assignment at GenCo that began on March 13, 2015. The new assignment paid \$9.00 per hour.

Mr. Van Sickle had established an original claim for benefits that was effective December 14, 2014. At that time, Workforce Development calculated Mr. Van Sickle's weekly benefit amount to be \$280.00. Mr. Van Sickle's base period consists of the third and fourth quarters of 2013 and the first and second quarters of 2014. Mr. Van Sickle has wages from Remedy during all four quarters. Mr. Van Sickle's highest earning base quarter was the second quarter of 2014, when his average weekly wage was \$495.67. Mr. Van Sickle's quarterly and average weekly wages from the Remedy employment from the fourth quarter of 2014 onward were as follows:

<u>Quarter</u>	<u>Wages</u>	<u>Average weekly wages</u>
2013/4	5,128.16	394.47
2014/1	5,851.71	450.13
2014/2	6,443.76	495.67
2014/3	7,075.25	544.25
2014/4	7,329.00	563.77
2015/1	4,983.88	383.38

Mr. Van Sickle established an additional claim for benefits that was effective March 22, 2015. He did so in response to the involuntary change in assignment and associated reduction in wages. Mr. Van Sickle has reported wages and been paid unemployment insurance benefits as follows:

<u>Week end date</u>	<u>Wages reported</u>	<u>Benefits paid</u>	<u>Actual wages and hours</u>
03/28/15	252.00	98.00	261.00 for 29 hours
04/04/15	216.00	134.00	216.00 for 24 hours
04/11/15	62.00	280.00	63.00 for 7 hours
04/18/15	81.00	269.00	zero
04/25/15	0.00	280.00	zero
05/02/15	0.00	280.00	zero
05/09/15	0.00	280.00	zero
05/16/15	0.00	280.00	zero
05/23/15	0.00	280.00	zero
05/30/15	0.00	280.00	zero

The claimant has ongoing outside obligation on Mondays and part of Fridays. Prior to the change in assignment, the employer had accommodated the outside conflict. Since beginning the new assignment, the claimant declined only one day of work on Monday, April 13, 2015, a day when the employer previously knew he could not be available for work. Since that time, Mr. Van Sickle has continued to call in available for work with Remedy, but the employer has had not work for him.

REASONING AND CONCLUSIONS OF LAW:

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".

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).

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 96.19(38)(c).

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.]

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer elected not to present testimony from anyone with personal knowledge concerning the claimant's assignments at General Mills, his transition to the assignment at GenCo, or his assignment at GenCo. A reasonable person would wonder why a person in Mr. Van Sickle's circumstances would voluntarily leave a job that paid \$10.00, \$13.00, or up to double that, to take an assignment that paid \$9.00 for part-time hours. The employer has presented insufficient evidence to rebut the claimant's assertion that his hours were decreased at General Mills, his wages were effectively decreased due to the loss of weekend shifts, that his transition from the General Mills assignment to the GenCo assignment was involuntary, that he has received reduced hours in the new assignment and that the employer has had no work for him since the week that ended February 18, 2018.

The weight of the evidence in the record establishes that the claimant was partially unemployed for the weeks ending March 28, April 4 and April 11, 2015. The claimant is eligible for benefits for those weeks provided he meets all other eligibility requirements. The weight of the evidence establishes that the claimant has been at least temporarily unemployed since the benefit week that ended April 18, 2015. The claimant has been eligible for benefits since that time, provided he meets all other eligibility requirements. The weight of the evidence indicates that the employer has not provided the same pattern of employment since the claimant established his additional claim for benefits as existed during the base period. The employer's account may be charged for benefits paid to the claimant in connection with the additional claim for benefits.

Because there appeared to have been a separation from the employment, the claimant must now commence making at least two job contacts per week and otherwise demonstrate an active and earnest search for new employment. This matter will be remanded to the Benefits Bureau for adjudication of the separation from employment consistent with this decision.

DECISION:

The April 15, 2015, reference 05, decision is modified as follows. The claimant was partially unemployed for the weeks ending March 28, April 4 and April 11, 2015. The claimant is eligible for benefits for those weeks provided he meets all other eligibility requirements. The claimant has been temporarily unemployed since the benefit week that ended April 18, 2015. The claimant has been eligible for benefits since that time, provided he meets all other eligibility requirements. The employer has not provided the same pattern of employment since the claimant established his additional claim for benefits as existed during the base period. The employer's account may be charged for benefits paid to the claimant in connection with the additional claim for benefits.

This matter will be remanded to the Benefits Bureau for adjudication of the separation from employment consistent with this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs