

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY J HOCKEY
Claimant

DEERE & COMPANY
Employer

APPEAL 22A-UI-03209-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/30/21
Claimant: Appellant (2)**

Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On January 14, 2022, Gary Hockey (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 7, 2022 (reference 02) that denied unemployment insurance benefits as of November 28, 2021 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on March 2, 2022. The parties were properly notified of the hearing. Claimant participated personally. Deere & Company (employer/respondent) did not call in to participate. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on September 17, 2005. Claimant last performed work there on February 28, 2022. Claimant was employed full-time in production. Claimant's hours were Monday through Friday, 6 a.m. to 2:30 p.m.

A decision was issued on November 23, 2021 (reference 01) which denied benefits from October 14, 2021 through November 20, 2021 based on a finding that claimant's unemployment was the result of a work stoppage caused by a labor dispute. That decision was not appealed further and has become final.

Claimant was again employed as usual in the week ending November 27, 2021. Claimant was then temporarily laid off due to a lack of work in the weeks ending December 4 and 11, 2021. He returned to his position the following week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated January 7, 2022 (reference 02) that denied unemployment insurance benefits as of November 28, 2021 based on a finding claimant was still employed for the same hours and wages is REVERED. Claimant is eligible for benefits as set forth below.

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 96.1A(37) provides:

"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) 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.

(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.

The administrative law judge finds claimant was temporarily laid off and eligible for benefits in the weeks ending December 4 and 11, 2021. Employer's account is subject to charge in those weeks. Claimant was not eligible in the prior week as he was employed as usual that week.

The administrative law judge does not address the labor dispute issue as a determination on that issue was previously reached and has become final.

DECISION:

The decision dated January 7, 2022 (reference 02) that denied unemployment insurance benefits as of November 28, 2021 based on a finding claimant was still employed for the same hours and wages is REVERED. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 15, 2022
Decision Dated and Mailed

abd/abd