

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAVIN L FERSCH
Claimant

APPEAL NO. 15A-UI-02930-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

OC: 02/01/15
Claimant: Respondent (3/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 February 25, 2015, reference 01, decision that allowed benefits to the claimant effective February 1, 2015, provided the claimant was otherwise eligible; based on an Agency conclusion that the claimant was able and available for work, but partially unemployed. After due notice was issued, a hearing was held on April 2, 2015. Claimant Gavin Fersch did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Karrie Minch, Senior Recruiter, represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and the claimant's weekly claim for benefits for the week that ended February 7, 2015.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended February 7, 2015.

Whether the claimant was partially unemployed during the week that ended February 7, 2015.

Whether the employer's account may be assessed for benefits paid to the claimant for the week that ended February 7, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Riverside Staffing Services, Inc. is a temporary employment agency. On Monday February 2, 2015, claimant Gavin Fersch completed a full-time temporary work assignment. The assignment paid \$8.25 per hour. Mr. Fersch worked his full shift that day. The employer did not have work for Mr. Fersch on February 3 and 4. On Thursday, February 5, 2015, Mr. Fersch started a new full-time, temporary work assignment. Mr. Fersch worked full shifts on February 5 and 6. The new assignment paid \$9.00 per hour. Mr. Fersch continues in the new full-time work assignment.

Mr. Fersch established a claim for unemployment insurance benefits that was effective February 1, 2015. Workforce Development calculated Mr. Fersch's weekly benefit amount to be \$195. Mr. Fersch discontinued his claim for benefits after the week that ended February 7, 2015. When Mr. Fersch made his benefit claim for that week, he reported \$156 in wages and received \$87 in unemployment insurance benefits. Mr. Fersch actually had \$201 in gross wages for that week, based on 23 hours of work.

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 \$15. Iowa Code Section 96.19(38)(b).

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.]

Mr. Fersch was able to work, available for work, but partially unemployed during the week that ended February 7 2015 and is eligible for benefits for that week. During that week, the employer had three days of work for Mr. Fersch and Mr. Fersch performed the work the employer had available for him. The employer did not have work available for Mr. Fersch on February 3 and 4. Mr. Fersch's gross wages for the week did not exceed his weekly benefit amount plus \$15. In other words they did not exceed \$210. Because Mr. Fersch incorrectly reported his wages for the week ending February 7, 2015 as \$156 instead of \$201, the administrative law judge will remand this case to the Benefits Bureau for correct calculation of the weekly benefit amount and for entry of an appropriate overpayment decision. Because Mr. Fersch was partially unemployed for the week ending February 7, 2015, the employer's account may be charged for benefits paid to Mr. Fersch for that week. Because Mr. Fersch was back to working full-time hours at the end of the week that ended February 7, 2015, he would no longer meet the work availability requirement effective February 8, 2015.

DECISION:

The February 25, 2015, reference 01, is modified as follows. The claimant is able to work available for work but partially unemployed during the week that ended February 7 2015 and is eligible for benefits for that week, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for the week ending February 7, 2015.

This matter is remanded to the Benefits Bureau for redetermination of the weekly benefit eligibility amount for the week ending February 7, 2015, using the \$201.00 correct gross wages amount, and for entry of an appropriate overpayment decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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