

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS M BREIHOLZ
Claimant

APPEAL NO. 12A-UI-10250-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIRKWOOD COMMUNITY COLLEGE –
AREA 1**
Employer

OC: 07/22/12
Claimant: Respondent (4)

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 August 15, 2012, reference 01, decision that allowed benefits, provided the claimant was otherwise eligible, based on an agency conclusion that the claimant was partially unemployed from Kirkwood Community College. After due notice was issued, a hearing was held on September 17, 2012. Claimant Dennis Breiholz participated. Human Resources Specialist Sheri Hlavacek represented the employer. The administrative law judge took official notice of the agency's administrative record of claimant's quarterly wages as reported by the employer (DBRO and (WAGE A).

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 establishing his claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant...

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dennis Breiholz commenced his employment with Kirkwood Community College in 2008 and remains in the employment. Mr. Breiholz works as a facilitator in the employer's commercial truck driver training program. Prior to July 1, 2012, Mr. Breiholz worked full-time hours. Effective July 1, 2012, the employer limited all employees categorized as full-time to working no more than 29 hours per week. Though Mr. Breiholz has a history of working full-time hours, the employer categorized him as a part-time employee and has limited him to 29 hours per week since July 1, 2012. Mr. Breiholz has remained available for full-time work.

Mr. Breiholz established a claim for unemployment insurance benefits that was effective July 22, 2012. Workforce Development calculated Mr. Breiholz's weekly benefit amount at \$396.00. Mr. Breiholz had not received any benefits in connection with the claim because for each week his claim has been active he has reported wages greater than his weekly benefit plus \$15.00.

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".

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 evidence indicates a substantial reduction in the number of hours Kirkwood has had for Mr. Breiholz since July 1, 2012. He is now capped at 29 hour per week, whereas he previously worked full-time hours. Based on the reduction in hours, Mr. Breiholz meets one of the criteria for partial unemployment. Given the reduction in available work hours, the employer's account will not be relieved of liability for benefits. However, because Mr. Breiholz's gross weekly wages since he established his claim for benefits have exceeded his \$396.00 weekly unemployment insurance benefit amount plus \$15.00, he cannot be considered partially unemployed up to this point and is not eligible for benefits under a theory of partial unemployment.

DECISION:

The Agency representative's August 15, 2012, reference 01, is modified as follows. Since the claimant established his claim for benefits, he has met one, but not both, requirements for a finding that he is partially unemployed. The claimant has been available for full-time work, but the employer has substantially reduced the number of hours available to the claimant. The claimant cannot be considered partially unemployed since he established his claim for benefits only because his gross weekly wages have exceeded his weekly benefit amount plus \$15.00. The employer's account will not be relieved of liability for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs