

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R MUNIZ
Claimant

APPEAL NO: 13A-UI-06758-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIVIC CTR OF GREATER DES MOINES INC
Employer

OC: 05/12/13
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 June 3, 2013, reference 01, that held the claimant was eligible for benefits effective May 12, 2013, and the employer was denied a relief of charges. A telephone hearing was held on July 10, 2013. The claimant did not participate. Bill McElrath, Business Director, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

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 stipulation of the evidence in the record finds: The claimant began work for the employer as a part-time on-call stage hand thru a local union on September 29, 2003. The department issued a decision on June 5, 2012, reference 01, that claimant was eligible for benefits on his May 13, 2012 claim and the employer was relieved of benefit charges.

The employer offered documentary evidence that shows claimant has continued to receive the same employment from the employer through his base employment period thru the date of this hearing. Employer does not object to claimant receiving benefits, but it is requesting its tax account to be relieved from benefit charges.

Claimant failed to respond to the hearing notice.

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 September 29, 2003 to the present, and no disqualification is imposed.

The claimant has continued to work part-time on-call as-needed to the present and he is eligible to receive benefits in any week for partial unemployment benefits when not working or working on a reduced work week basis.

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.

The employer is providing claimant with the same employment now as it has during the base period. This employment pattern is confirmed by a June 2012 decision involving the same parties and issue.

DECISION:

The department decision dated June 3, 2013, reference 01, is modified in favor of the employer. The claimant is able and available for work, and eligible for benefits effective May 12, 2013. The employer is granted a relief from benefit charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs