

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FAITH A MONEN

Claimant

APPEAL NO. 10A-UI-16762-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSENBOOM MACHINE & TOOL INC

Employer

OC: 10/31/10

Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.7-2-a –Relief from Charges

STATEMENT OF THE CASE:

Rosenboom Machine & Tool (employer) appealed a representative's November 30, 2010 decision (reference 02) that concluded Faith Monen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 24, 2011. The claimant participated personally. The employer participated by Katherine Langel, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was able and available for work after October 31, 2010, and whether the employer can be relieved of charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 7, 2003, as a full-time fabricator. The claimant suffered a non-work-related injury and was working with restrictions through October 28, 2010. Her physician released her to return to work without restrictions on October 28, 2010. The employer would not let the claimant return to her full-time hours until it received a second opinion from the company doctor. The claimant attended an appointment on November 9, 2010, and continued working the restricted hours that were prescribed prior to October 28, 2010. The company doctor did not provide a report until December 1, 2010. The company doctor agreed that the claimant could return to work without restrictions.

The claimant was able and available to work her regular hours for the period from October 28, 2010 to the present but was scheduled to work fewer hours than regularly scheduled in the past. The claimant reported gross wages each week. The claimant started working full-time hours again on December 2, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed from October 31 to December 2, 2010.

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".

Iowa Code § 96.19-38 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, 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.

An individual shall be deemed partially unemployed in any week in which 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 § 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.

Because the claimant is currently employed less than her regular full-time hours, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For the period the employer did not offer the same wages and hours as contemplated in the contract of hire, it is liable for benefit charges to its account.

DECISION:

The November 30, 2010, reference 02, decision is affirmed. The claimant is able to work and available for work effective October 31, 2010. Benefits are allowed, provided the claimant is otherwise eligible. The employer is not relieved of charges.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs