

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L BADER
Claimant

APPEAL NO. 11A-UI-01749-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMANCHE COMMUNITY SCHOOL DIST
Employer

**OC: 01/16/11
Claimant: Respondent (4)**

Section 96.4(3) – Able and Available
Section 96.7(2)a(2) – Base Period Employer

STATEMENT OF THE CASE:

The employer, Camanche Community School District, filed an appeal from a decision dated February 9, 2011, reference 01. The decision allowed benefits to the claimant, Terry Bader. After due notice was issued a hearing was held by telephone conference call on March 14, 2011. The claimant participated on his own behalf. The employer participated by Payroll Clerk Linda Decker.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Terry Bader began employment with Camanche Community School District on May 7, 1990, as a seasonal maintenance worker from May until September. In August 1990 he was also hired as a substitute school bus driver during the school year with no guarantee of any minimum hours per day or days per week. He had a regular full-time job elsewhere.

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".

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.

The claimant is still employed by Camanche Community School District in the same capacity as during his base period. Under the provisions of the above Code section, he is eligible for benefits but the account of this employer shall not be charged with benefits paid to the claimant.

DECISION:

The representative's decision of February 9, 2011, reference 01, is modified in favor of the appellant. Terry Bader is qualified for benefits, provided he is otherwise eligible. The account of Camanche Community School District shall not be charged with benefits paid to the claimant.

If the claimant discontinues work this should be reported immediately to the Iowa Workforce Development.

The claimant shall report gross earnings from this employer during every benefit week claimed and continue to meet all other eligibility requirements.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs