

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER N SHEA
Claimant

APPEAL NO. 12A-UI-13769-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORDEHOFF CONTRACTING INC
Employer

OC: 02/06/12
Claimant: Appellant (2R)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Wordehoff Contracting Inc. filed a timely appeal from the representative's decision dated November 14, 2012, reference 05, which held the claimant eligible to receive unemployment insurance benefits beginning November 14, 2012 finding that the claimant was available for work and working all work that was available to him. After due notice was provided, a telephone hearing was held on December 18, 2012. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Gary Wordehoff, Company Owner.

ISSUE:

At issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Christopher Shea began employment with Wordehoff Contracting Inc. on June 25, 2012. Mr. Shea was hired to work as a full-time general laborer and was paid at the rate of \$14.25 per hour.

Mr. Shea reopened his claim for benefits effective October 14, 2012. Mr. Shea received unemployment insurance benefits for the weeks ending October 20, October 27 and November 3, 2012. During each of these weeks full-time employment with Wordehoff Contracting Inc. was available to Mr. Shea. However the claimant, by his own choice, chose not to report for available employment. The company during these weeks was working at full capacity and all other workers were working 40 plus hours per week. Although full-time work was available to the claimant each of the three weeks in question, the claimant had not worked the full-time hours available to him by his own choice, the claimant nevertheless claimed partial unemployment insurance benefits for these weeks.

It is the employer's position that the claimant should not be eligible to receive unemployment insurance benefits as full-time work was available to the claimant each week and the claimant chose not to accept the work that was available to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was not able and available for work for the weeks ending October 20, October 27 and November 3, 2012.

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".

871 IAC 24.23 (1) and (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(26) 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.

The evidence in the record establishes that Mr. Shea claimed unemployment insurance benefits for the weeks ending October 20, 2012, October 27, 2012 and November 3, 2012 indicating that less than full-time work was available to him from Wordehoff Contracting. Because of the claimant's statements to Iowa Workforce Development the claimant received unemployment insurance benefits those weeks.

Based upon the evidence in the record the administrative law judge concludes that the claimant was not able and available for work during the weeks in question. The evidence in the record establishes that full-time work was available to Mr. Shea and other workers but that Mr. Shea, for his own reasons, was unwilling to accept full-time employment those weeks. The claimant is ineligible to receive unemployment insurance benefits those weeks because he did not make himself available for work. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated November 14, 2012, reference 05, finding the claimant eligible to receive unemployment insurance benefits beginning October 14, 2012 is reversed. The claimant is ineligible to receive benefits for the weeks ending October 20, 2012, October 27, 2012 and November 3, 2012 as he was not available for work as required by the provisions of the Employment Security Law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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