

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAYTON J PRYOR
Claimant

AKIN LTD
Employer

APPEAL 21R-UI-16957-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the March 18, 2021, (reference 02) unemployment insurance decision that allowed benefits based upon a finding that claimant was able to and available for work. A telephone hearing was scheduled for June 2, 2021, pursuant to due notice. On June 15, 2021, the administrative law judge issued a decision dismissing the appeal because the claimant did not register for the hearing within fifteen minutes of the start time. Claimant appealed the decision to the Employer Appeal Board (EAB), who remanded the appeal for a new hearing. The parties were properly notified of the hearing. A telephone hearing was held on September 23, 2021. Claimant Payton J. Pryor participated personally. Employer Akin, Ltd. participated through supervisor Tony Young. Ryan Draper observed. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective February 7, 2021?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a yardsman for this employer beginning February 23, 2018. Claimant separated from employment on September 12, 2020.

Based on the administrative record, it appears claimant has requalified for benefits since separating from this employer.

Claimant reactivated his claim for benefits in February 2021 when he was laid off from his full-time employer. He performed work intermittently for his full time employer. He has reported wages for the weeks ending February 27, March 20, and March 27, 2021. Claimant has

remained physically able to work and available for work. He was not required to perform work searches, as he was on a seasonal layoff and waiting to be recalled to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not employed with the employer. Claimant is able to and available for work. The underlying decision is modified in favor of employer.

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".

Here, the evidence in the record establishes that claimant is no longer employed with the employer in any capacity. Both parties admit that the employment relationship is over.

Claimant presented unchallenged testimony establishing he is able to and available for work. He is physically able to work. He has been available to work since his layoff, and he has intermittently performed work and reported wages earned from that work. Benefits are allowed, provided he is otherwise eligible.

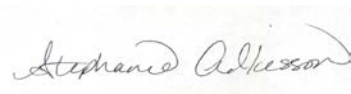
Furthermore, it appears from the administrative record that claimant has earned well over ten times his weekly benefit amount since separating from this employer. This matter will be remanded for a ten times requalification decision to determine whether the employer is chargeable for any of claimant's benefits.

DECISION:

The March 18, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant/employer. Claimant is no longer employed with the employer. He is able to and available for work effective February 7, 2021. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant has earned ten times his weekly benefit amount and requalified for benefits since separating from this employer is remanded to the Benefits Bureau of Iowa Workforce Development.



Stephanie Adkisson
Administrative Law Judge
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September 28, 2021
Decision Dated and Mailed

sa/scn