

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN S VAN HOUTEN
Claimant

APPEAL NO. 11A-UI-02587-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT**
Employer

OC: 01/02/11

Claimant: Respondent (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Des Moines Independent Community School District (employer) appealed a representative's February 22, 2011 decision (reference 01) that concluded Martin S. Van Houten (claimant) was qualified to receive unemployment insurance benefits and the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2011. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on March 22, 2011. The employer indicated that Kathy McKay would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. McKay was not available; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant employed by the employer for less than his usual hours and wages?

Is he eligible for full or partial unemployment insurance benefits?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer in approximately 2003. He works part-time as a softball coach. He has an annual contract under which he receives approximately \$7.25 per hour, with a maximum of approximately \$4,500.00 per season. Each year the paid time begins near the end of April or early May and goes through about mid July. Each year, including in 2010, in about early July he has been given a new contract for the following year's season. He anticipates resuming that work at the end of April or early May 2011.

The claimant has full-time employment with another employer, Van Houten Custom Cabinets. He is occasionally on layoff from that employer due to a lack of work. He has worked in that job for

approximately the last 12 years, and has been able to perform his part-time coaching job with the school employer around his full-time job. His most recent day of work with his full-time employer was on or about January 8, 2011, prompting him to establish a claim for unemployment insurance benefits, which was dated effective January 2, 2011. His weekly benefit amount was calculated to be \$210.00.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if he has been permanently or temporarily separated from one employer and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during his base period and remains in that employment, he continues to be eligible for benefits as long as he is receiving the same employment from the part-time employer that he received during the base period. However, under those circumstances, the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a.

The claimant was separated from his regular full-time employer and continues to work for his part-time base period employer, the school district. The employer is providing the claimant with substantially the same employment as it provided during his base period. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective January 2, 2011, provided he was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a, the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during his base period, which is currently the case.

DECISION:

The unemployment insurance decision dated February 22, 2011 (reference 01) is modified in favor of the employer. The claimant is eligible for partial unemployment insurance benefits, provided he is otherwise eligible, and the employer's account is currently exempt from charge for benefits paid to the claimant.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw