

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANK D OSBORNE**  
Claimant

**APPEAL NO. 13A-UI-02086-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUBURBAN CONSTRUCTION INC**  
Employer

**OC: 02/03/13**  
**Claimant: Respondent (1)**

Section 96.19-38-a & b – Total and Partial Unemployment  
Section 96.7-2-a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 15, 2013, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 25, 2013. Claimant participated personally. Employer participated by Darin Wilson, Vice President; Brian Girsakis, President and represented by Michael Koury, Attorney at Law. Exhibit One was admitted into evidence.

**ISSUE:**

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

**FINDINGS OF FACT:**

The claimant currently works for a base period employer, full time under the same terms and conditions as contemplated in the original contract of hire. Employer laid claimant off the week of January 27, 2013 to February 2, 2013 due to inclement weather. Employer's policy manual indicates that a layoff due to weather is unpaid. Claimant was able and available for work during the entire week in question. Employer offered no work due to weather that made work dangerous. Employer has consistently offered 40-hour work weeks during the base period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is not relieved of benefit charges.

Iowa Code section 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 section 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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Benefits are allowed. Inasmuch as the current employer is not offering the same wages and hours as in the base period, benefit charges shall be made to its account. Employer's policy that indicates claimant goes unpaid for a weather day is not a defense to unemployment. Eligibility is based on claimant's willingness to work and the availability of hours. Since employer had no hours, this is a week of partial unemployment. Benefits allowed, provided claimant is otherwise eligible.

It is noted that all claimants must report wages earned for partial weeks of unemployment. The wages may partially or wholly reduce entitlement to unemployment. This is not an ongoing entitlement. Claimant is only eligible when working a week of reduced hours.

**DECISION:**

The February 15, 2013, reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. The account of the current employer shall be charged.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs