

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER W SPENCER
Claimant

APPEAL NO. 13A-UI-03308-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZIGMANN INC
Employer

OC: 02/03/13
Claimant: Appellant (4)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Tyler Spencer, filed an appeal from a decision dated March 11, 2013, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 17, 2013. The claimant participated on his own behalf. The employer, Zigmann, participated by Owner John Weichmann.

ISSUE:

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

FINDINGS OF FACT:

Tyler Spencer began employment with Zigmann in August 2009 as a part-time customer service representative and shift supervisor. He gave a two-week notice to Owner John Weichmann around November 26, 2012, because he had been offered a full-time job with Midwest Plastics to begin December 10, 2012. Mr. Weichmann asked him to work December 22, 2012, and January 4, 13 and 18, 2013, and he agreed to those dates as well as doing any “fill in” work as the employer needed and his schedule allowed.

Mr. Spencer worked for Midwest Plastics until being laid off February 6, 2013. Since then he has resumed working as many hours as available for Zigmann, working less than full time.

REASONING AND CONCLUSIONS OF LAW:

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".

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.

The claimant is still working part-time for this company as he has been since 2009. He is able and available for his regular full-time employment and reporting his wages from Zigmann. Because Zigmann is a base-period employer, it shall not be charged for benefits paid to the claimant after December 10, 2012.

DECISION:

The representative's decision of March 11, 2013, reference 02, is modified in favor of the appellant. Tyler Spencer is eligible for unemployment benefits, providing he is otherwise qualified. The account of Zigmann will not be charged with benefits paid to the claimant after December 10, 2012.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs