

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERENCE L VAN PELT
Claimant

APPEAL NO. 14A-UI-02563-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASHINGTON INVENTORY SERVICES INC
Employer

OC: 11/03/13
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Terrence Van Pelt filed a timely appeal from the March 7, 2014, reference 01, decision that denied benefits effective February 2, 2014 based on an agency conclusion that he was not partially unemployed as of that time. After due notice was issued, a hearing was held on March 31, 2014. Claimant participated. The employer was aware of the hearing, but did not respond to the hearing notice instructions to provide a telephone number for the hearing. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant (DBRO and KCCO). Exhibit D-1 was received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since he established the additional claim for benefits that was effective February 2, 2014.

Whether the claimant was partially unemployed from his employment since February 2, 2014.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Terence Van Pelt established an original claim for benefits that was effective November 3, 2013. Workforce Development determined Mr. Van Pelt's weekly benefit amount to be \$212.00. In connection with that claim, Mr. Van Pelt received benefits for the period of November 3, 2013 through January 4, 2014. Mr. Van Pelt then discontinued his claim.

Mr. Van Pelt established an *additional* claim for benefits that was effective February 2, 2014. Mr. Van Pelt continued that additional claim for benefits through the benefit week that ended March 8, 2014. Mr. Van Pelt then discontinued the claim. During the period when the additional claim for benefits was active, Mr. Van Pelt did not decline any work the employer had available.

for him. Mr. Van Pelt's additional claim for benefits was prompted by a decrease in the amount of work, and work hours, that the employer had available for Mr. Van Pelt. Mr. Van Pelt's hourly was \$8.50 when he was performing his inventory duties and \$7.25 when he was traveling to a site to be inventoried.

For the period of February 2, 2014 through March 8, 2014, Mr. Van Pelt reported wages, and received unemployment insurance benefits, as follows:

<u>Benefit week end date</u>	<u>Wages reported</u>	<u>Benefits paid</u>
02/08/14	49.00	212.00
02/15/14	70.00	195.00
02/22/14	134.00	131.00
03/01/14	188.00	77.00
03/08/14	.00	.00

The employer's work week, for payroll purposes, runs from Thursday through Wednesday. For the period in question, the employer reported wages paid to Mr. Van Pelt as follows:

<u>Pay date and payroll week ending date</u>	<u>Wages</u>
2/6/14	187.43
2/13/14	120.90
2/20/14	70.60
2/27/14	144.20
3/6/14	117.30
3/13/14	75.87

This employer is Mr. Van Pelt's sole base period employer. Mr. Van Pelt's quarterly wages from this employment, as reported by the employer to Workforce Development, are as follows:

<u>Quarter</u>	<u>Wages</u>
2010/1	4,089.09
2010/2	5,716.61
2010/3	3,950.07
2010/4	1,083.36
2011/1	3,649.28
2011/2	5,400.35
2011/3	4,072.46
2011/4	2,297.59
2012/1	2,596.07
2012/2	3,761.17
2012/3	2,872.00
2012/4	1,220.56
2013/1	3,024.20
2013/2	4,897.19
2013/3	2,920.87
2013/4	1,535.72

Mr. Van Pelt's base period for purposes of the claim year that began for him on November 3, 2013 consists of the third and fourth quarter of 2012 and the first and second quarter of 2013. During that time, in bold text above, Mr. Van Pelt's average weekly wages were \$231.00.

Mr. Van Pelt's average weekly wages during his highest earning base period quarter were \$376.71.

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".

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. Iowa Code Section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

(a) 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.

[Emphasis added.]

The weight of the evidence indicates that Mr. Van Pelt was indeed partially unemployed during the period of February 2, 2014 through March 8, 2014. During that period, the employer had less work available for Mr. Van Pelt than the employer had provided to Mr. Van Pelt during the base period. In addition, Mr. Van Pelt's weekly wages, as reported by Mr. Van Pelt and as reported by the employer, did not exceed his weekly benefit amount plus \$15.00. The evidence indicates that Mr. Van Pelt was available for all of the work that the employer had available to him and that Mr. Van Pelt continued to be available for work to the same extent as in his base period. Mr. Van Pelt was eligible for benefits for the period of February 2, 2014 through March 8, 2014, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The claims deputy's March 7, 2014, reference 01, is reversed. The claimant was partially unemployed during the period of February 2, 2014 through March 8, 2014. The claimant was able and available during that period. The claimant is eligible for benefits for the period of February 2, 2014 through March 8, 2014, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs