

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS A BURKLE
Claimant

APPEAL NO. 13A-UI-04876-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR RAPIDS COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 04/01/12
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work
871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 22, 2013, reference 04, that concluded the claimant was still employed for the same hours and wages as his original contract of hire and could not be considered partially unemployed effective March 13, 2013. A telephone hearing was held on July 31, 2013, before Administrative Law Judge Julie Elder. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Paul James, Matthew Hatcher, Steve Goodall, and Parrish Copeland. Anthony Spurgetis participated in the hearing on behalf of the employer. Exhibits One, A, and B were admitted into evidence at the hearing. The case was consolidated with the employer's appeal of a decision granting the claimant benefits effective April 7, 2013, (decision dated April 30, 2013, reference 01) on the basis that he was on a short-term layoff at that time. Because Administrative Law Judge Elder was on leave, the cases were reassigned to me, Administrative Law Judge Steven Wise, to issue the decision in the cases, after notice to the parties. I have carefully reviewed the audio recording and documents in the file in issuing a decision.

Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show he was required to file claims effective April 1, 2012, and April 7, 2013, to receive benefits in subsequent benefit years. For the claim filed effective April 1, 2012, his weekly benefit amount was \$385.00 and was based on wages from Nash Finch and the employer. For the claim filed effective April 1, 2013, his weekly benefit amount was \$224.00 and was based on wages from the employer. The claimant received Emergency Unemployment Compensation for the weeks between September 30, 2012, and April 6, 2013. He was in Department Approved Training continuously from December 30, 2012, through August 10, 2013. The employer is a reimbursing employer. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Was the claimant laid off due to lack of work?

Is the employer chargeable for benefits paid to the claimant?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant originally filed a claim for unemployment insurance benefits effective April 2, 2011, when he was laid off after 35 years of full-time employment with Nash-Finch. He was required to file claims effective April 1, 2012, and April 7, 2013, to receive benefits in subsequent benefit years. For the claim filed effective April 1, 2012, the claimant's weekly benefit amount was \$385.00 and was based on wages from Nash Finch and the employer. For the claim filed effective April 1, 2013, his weekly benefit amount was \$224.00 and was based on wages from the employer only.

The employer is a school district in Cedar Rapids, Iowa. The claimant began working as an assistant wrestling coach for the school district in 1990. He works during the wrestling seasons at Washington High School and McKinley Middle School under short-term work assignment agreements. He worked under a short-term work assignment agreements during the 2012-13 school year. The short-term work assignment agreement for Washington High School was for November 12, 2012, to February 16, 2013, and he was paid a salary of \$4,833.00 for his work during that period. The short-term work assignment agreement for McKinley Middle School was for January 7, 2013, to March 7, 2013, and he was paid a salary of \$3,021.00 for his work during that period. The claimant reported his wages when he filed claims while he was working for the school district and in weeks in which his wages were less than his earning limit, he was paid benefits.

The claimant filed an additional claim for unemployment insurance benefits effective March 17, 2013, after the wrestling season was over and he completed his short-term work assignment. He filed a new claim for unemployment benefits effective April 7, 2013, after his benefit year expired.

The claimant received Emergency Unemployment Compensation for the weeks between September 30, 2012, and April 6, 2013. The benefits he received starting April 7, 2013, were regular unemployment compensation. He was in Department Approved Training continuously from December 30, 2012, through August 10, 2013.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. Neither of these disqualifications applies here. On the other hand, an employee who is laid off due to lack of work is eligible for unemployment insurance benefits. A layoff is defined as "a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations. 871 IAC 24.1(113)a (emphasis added). Additionally, the rules provide the claimant is eligible for benefits if employed on a temporary basis and fulfilled the contract of hire when each of the jobs was completed. 871 IAC 24.26(19).

The Agency apparently relied on 871 IAC 24.23(26) in making its decision. The rule 24.23(26) provides: "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.” The problem with applying the rule in this case is two-fold. First, as of March 17, when the claimant filed the additional claim for benefits he was not partially unemployed at all, he was totally unemployed because of a seasonal layoff. Second, during the period the claimant was working part-time as a wrestling coach and was partially unemployed, he was eligible because the majority of his base-period wages were from his full-time job with Nash Finch. The employment with the school district would be considered supplemental employment and he would be eligible for benefits. 871 IAC 23.43(4).

The employer’s argument is the claimant knew he was employed for the high school and middle school season but not afterward and had assurance of coming back to work for the next season. Since he knew the duration of employment, he somehow then should be disqualified for benefits. While this is a valid argument between school years because the law authorizes such a disqualification (Iowa Code § 96.4-5), it is not valid between sports seasons because no law requires such a disqualification. It is notable that the law provides that professional and semiprofessional athletes covered by the unemployment insurance law are ineligible for benefits between sport seasons if they have reasonable assurance of reemployment but the rules specifically state the provisions does not apply to coaches and trainers. 871 IAC 24.57.

The claimant’s situation is no different than that of employees of temporary employment firms who know upfront when their assignments are ending or typical construction workers or farm laborers who know they will be laid off each year over the winter months. Unemployment benefits are not restricted to workers who are unemployed unexpectedly. A worker who knows or even agrees in advance that the job is going to end at some definite time are still unemployed through no fault of their own when the work is completed.

The claimant was laid off due to lack of work and is eligible to receive unemployment insurance benefits effective March 17 and April 7, 2013.

Since the claimant is approved training, he is not required to look for work and be available for other work. 871 IAC 24.39(2).

Iowa Code § 96.7-2-a(2) provides that the amount of 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 unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

Iowa Code § 96.7-2-a(2) would relief the employer of benefit charges during the time the claimant was working, but not for the time after the layoff. The unemployment law, however, does not allow the Agency to charge an employer for federal EUC benefits. The employer cannot be charged for any benefits the claimant received from September 30, 2012, and April 6, 2013. In addition, the rules provide that: “No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid. 871 IAC 23.43(7). As a result, the employer is chargeable for benefits paid effective April 7,

2013. It should be noted that the decision made in Appeal 13A-UI-07589-SWT that disqualified the claimant between school years remains in effect.

The claimant asserted at the hearing that he was not aware the employer was chargeable for benefits. He should be aware that currently the employer is the only chargeable employer on his claim. Nash Finch no longer has anything to do with his unemployment benefits.

DECISION:

The unemployment insurance decision dated April 22, 2013, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits effective March 17, 2013. The employer will not be charged for the EUC benefits the claimant received from March 17 to April 6, 2013.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css