

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARRET G FICKEN**  
Claimant

**APPEAL NO. 07A-UI-06046-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B&D SERVICES INC**  
Employer

**OC: 05/27/07 R: 03  
Claimant: Respondent (4)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, B&D Services, filed an appeal from a decision dated June 15, 2007, reference 02. The decision allowed benefits to the claimant, Garret Ficken. After due notice was issued a hearing was held by telephone conference call on July 3, 2007. The claimant participated on his own behalf. The employer participated by Executive Director Julie Schwarting.

**ISSUE:**

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

**FINDINGS OF FACT:**

Garret Ficken began employment with B&D on June 18, 2004, as a part-time program assistant. He was never guaranteed any minimum number of hours per week and has worked anywhere from 10 to 30 hours per week. He is still employed in that capacity at the present time.

Mr. Ficken filed a claim for unemployment benefits with an effective date of May 27, 2007, because of a separation from another employer.

**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.

Mr. Ficken is still employed by B&D in the same capacity as he was during his base period. Under the provisions of the above Code section he is therefore eligible for benefits but the employer's account shall not be charged.

**DECISION:**

The representative's decision of June 15, 2007, reference 02, is modified in favor of the appellant. Garret Ficken is qualified for benefits provided he is otherwise eligible. However, the account of B&D Services shall not be charged with any benefits paid to the claimant at the time.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css