

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOULIDETH LY
Claimant

APPEAL NO: 13A-UI-12943-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMCAST SPECTACOR LP ET AL
GLOBAL SPECTRUM LP**
Employer

OC: 10/06/13
Claimant: Appellant (4)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
871 IAC 23.32(4)a – Supplemental Employment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 8, 2013 reference 07 that held he was still employed part-time working whenever work was available as of October 6, 2013, and benefits are denied. A telephone hearing was held on December 11, 2013. The claimant participated. Diana Frischmeyer, Finance Director, participated for the employer.

ISSUES:

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

The issue is whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began working for the employer on September 22, 2011, as a part-time on-call guest service worker. He accepted a full-time seasonal job with Service America at the Iowa Cubs about April 2013. He continued working some part-time hours for the employer.

Claimant filed his October 2013 benefit claim when he finished his seasonal job for Service America. This employer did not protest the claim. Claimant is trying to work more part-time hours for the employer to offset his seasonal lay-off.

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 96.19-38 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.

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....

The administrative law judge concludes claimant does meet the availability requirements of the law effective October 6, 2013, and no disqualification is imposed for this reason.

The administrative law judge further concludes claimant is eligible for benefits by reason of supplemental employment and the employer is not charged.

When claimant accepted the full-time job for Service America, it became his primary employer and his part-time on-call employer his supplemental employer. His completion of seasonal work without employer protest means there is no disqualifying issue for the issues in this hearing.

DECISION:

The department decision dated November 8, 2013, reference 07, is modified. The claimant is eligible for benefits effective October 6, 2013, and the employer is not charged.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs