

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE G HANEY
Claimant

APPEAL NO. 08A-UI-02605-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

OC: 05-20-07 R: 02
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 11, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on April 1, 2008. The claimant did participate. The employer did participate through Terry Moffitt, Director of Operations.

ISSUE:

Is the claimant able to and available for work or is he partially unemployed?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cook fast food restaurant, part-time, beginning June 25, 2007, through date of hearing, as he remains employed.

The claimant was hired as a fry cook and was not guaranteed any set schedule or particular amount of hours when he was hired. When he was hired, the claimant worked over thirty hours during each of the first fourteen of twenty weeks of his employment. He only worked less than twenty hours during two weeks. The claimant worked on seven separate Sundays during the first twenty weeks of his employment.

The claimant's hours reduced after his first twenty weeks of employment, according to the employer, because the claimant was no longer willing to work on Sundays and the business was in the winter period when the store is closed one hour earlier each day.

In the next eighteen weeks of the claimant's employment he never worked even thirty hours per week and only on four weeks did he work over twenty hours per week. Even if the administrative law judge were to accept that the claimant was losing hours because he refused to work on Sunday, his hours were much lower than missing one shift per week would indicate. The claimant established that he normally worked at least thirty hours in a week and his hours were reduced due to a slow down in business and a change in his schedule beyond his refusal

to work on Sundays. The claimant's request for one day per week when he would not be scheduled for work does not make him unavailable for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period beginning February 10, 2008.

Iowa Code § 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 § 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.

Iowa Code § 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.

Because the claimant is currently employed less than his regular established hours, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 11, 2008 reference 02, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. The account of employer (account number 236532), may be liable for charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw