

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID G MCELVOGUE

Claimant

APPEAL NO. 09A-UI-07465-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/29/09

Claimant: Appellant (4)

Section 96.4(3) – Able and Available
Section 96.7(2)a(2) – Relief from Charges

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated May 6, 2009, reference 02, which allowed benefits to David McElvogue but denied the employer relief from benefit charges. After due notice was issued, a hearing was held by telephone on June 10, 2009. Mr. McElvogue participated personally. The employer participated by Gordon Foreman, Manager.

ISSUE:

At issue in this matter is whether Mr. McElvogue is available for work within the meaning of the law. A secondary issue is whether the employer's account should be relieved of charges for benefits paid to him.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McElvogue has been employed by Casey's since January 20, 2006. He was hired to work approximately eight hours each week and continues to work the same schedule. He filed a claim for job insurance benefits effective March 29, 2009 because he was laid off from his regular, full-time employment with Kent Feeds on March 26, 2009. Mr. McElvogue returned to work for Kent Feeds on April 26 but only on a part-time basis.

REASONING AND CONCLUSIONS OF LAW:

Mr. McElvogue's employment with Casey's is supplemental employment. He filed for unemployment only because of a layoff from his regular employment. He remained available to work the same number of hours for his full-time employer as he did before the layoff. Therefore, he was and is available for work within the meaning of Iowa Code section 96.4(3).

Casey's is currently providing Mr. McElvogue with the same employment as it did during the base period of his claim. As such, the employer is entitled to a relief from charges for any benefits paid to him on his current claim, as long as he remains in the employment. Iowa Code

section 96.7(2)a(2). If the employment status changes, the parties should notify Workforce Development so that any necessary changes are made.

DECISION:

The representative's decision dated May 6, 2009, reference 02, is hereby modified. Mr. McElvogue is available for work within the meaning of the law. Benefits are allowed, provided he is otherwise eligible, but shall not be charged to Casey's.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css