

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERALD L COOK
Claimant

**JOHN DEERE CONSTRUCTION
EQUIPMENT**
Employer

APPEAL 22A-UI-00286-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/10/21
Claimant: Appellant (4)**

Iowa Code § 96.5(4) – Labor Disputes
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

On November 29, 2021, Gerald Cook (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute.

A telephone hearing was held on January 24, 2022. The parties were properly notified of the hearing. The claimant participated personally. John Deere Construction Equipment (employer/respondent) did not participate. Official notice was taken of the administrative record.

ISSUES:

- I. Is the claimant disqualified from benefits due to a labor dispute?
- II. Was the claimant able to and available for work?
- III. Was the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in March 2003. Claimant worked for employer most recently as a full-time fork-truck operator. Claimant works Monday through Friday. Claimant works in department 152 at employer's Dubuque location. Claimant performed work in this position through the week ending October 9, 2021. Claimant's supervisor informed him around that time that he would be laid off in the weeks ending October 16 and 23, 2021 due to a parts shortage. Claimant was able and available for work during the majority of the work-week ending October 16, 2021, when he was laid off.

Independent of the layoff due to a parts shortage, a labor dispute concerning the terms and conditions of employment began on October 14, 2021. Claimant is a union member and was

participating in and interested in the strike. Claimant did strike-related work for the union as directed by it during the course of the strike.

The labor dispute ended on November 20, 2021. Claimant returned to his previous position on or about that date. Claimant has been employed in that position since the labor dispute ended. Claimant filed a claim for benefits in the weeks ending October 16 and 23, 2021. Claimant did not earn any wages in those weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is MODIFIED in favor of appellant. Benefits are allowed as set forth below.

Iowa Code section 96.1A(37) 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 either of the following apply:

(1) 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.

(2) 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 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 96.5(4) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

4. Labor disputes.

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

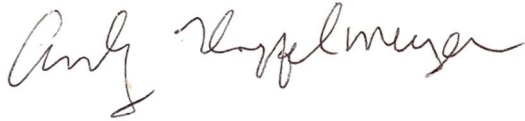
A claimant is disqualified from unemployment insurance benefits during a work stoppage caused by a labor dispute. A work stoppage due to a labor dispute must be the cause of unemployment to result in the striking worker's disqualification from receiving unemployment benefits. *Titan Tire Corp. v. Employment Appeal Bd.*, 641 N.W.2d 752 (Iowa 2002). There is an exception to this disqualification if the claimant is not financing, participating in, or directly interested in the labor dispute **AND** does not belong to a class of workers who are financing, participating in, or directly interested in the labor dispute. See Iowa Code 96.5(4)(a).

The administrative law judge finds claimant was temporarily unemployed due to a parts shortage and able and available for work during the majority of the work-week ending October 16, 2021. Benefits are therefore allowed in this week.

The administrative law judge finds claimant is disqualified from benefits in the other week filed, the week ending October 23, 2021. There was a stoppage of work at claimant's work location at that time due to an employee strike concerning the terms and conditions of their employment, and claimant was participating in and interested in the labor dispute. Benefits must therefore be denied in that week. The administrative law judge finds that the reason for claimant's unemployment in that week was ultimately due to the labor dispute, as there would have been a work stoppage caused by the labor dispute even if there had not been a parts shortage and work was available in that week.

DECISION:

The decision dated November 23, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is MODIFIED in favor of appellant. Benefits are allowed as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 16, 2022

Decision Dated and Mailed

abd/abd