

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A MCCANN
Claimant

APPEAL NO. 17A-UI-08627-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW CHOICES INCORPORATED
Employer

OC: 08/06/17
Claimant: Respondent (1R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 14, 2017, reference 01, decision that allowed benefits to the claimant effective August 6, 2017 provided he was otherwise eligible and that held the employer's account could be assessed for benefits, based on the claims deputy's conclusion that that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on September 11, 2017. Claimant Michael McCann did not register a telephone number for the hearing and did not participate. Heather Bolten, Human Resources Coordinator, represented the employer and presented additional testimony through Krissy Ronnfeldt, Human Resources Assistant. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-A and WAGE-C.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since establishing his claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant...

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: New Choices, Inc. is a social services agency that provides home and community based support services to individuals with disabilities. Michael McCann began his employment with New Choices in 2009 and continues as an employee of New Choices. Until July 3, 2017, the employer provided Mr. McCann with full-time employment. Up to that point, Mr. McCann worked four 10-hour overnight shifts per week with a particular client. The work hours were 10:00 p.m. to 8:00 a.m., Monday evening through Friday morning. The overnight work paid \$9.75 per hour. Mr. McCann also provided services to an additional client from noon to 3:00 p.m. on Saturdays. Mr. McCann's wage for that work was \$12.51 per hour. After July 3, 2017, the overnight client no longer needed services and the employer no longer had that work

available for Mr. McCann. The employer has not had full-time work available for Mr. McCann since that time.

In response to the reduction in available work hours, Mr. McCann established an unemployment insurance claim that was effective August 6, 2017. New Choices is the sole base period employer. Iowa Workforce Development set Mr. McCann's weekly benefit amount at \$321.00. Mr. McCann has made four weekly claims, for the period of August 6, 2017 through September 2, 2017. During those four weeks, Mr. McCann performed the work the employer had available for him and did not decline any offered work. Mr. McCann reported wages for each of the four weeks in the claim and has received unemployment insurance benefits for those weeks, all as follows. For the week that ended August 12, 2017, Mr. McCann reported \$72.00 in wages and received \$321.00 in unemployment insurance benefits. For the week that ended August 19, 2017, Mr. McCann reported \$177.00 in wages and received \$224.00 in benefits. For the week that ended August 26, 2017, Mr. McCann reported \$230.00 in wages in received \$171.00 in benefits. For the week that ended September 2, 2017, Mr. McCann reported \$266.00 in wages and received \$135.00 in benefits.

Mr. McCann has not yet made a weekly claim for the week of September 3-9, 2017 and it is unknown whether he will make a weekly claim for that week or subsequent weeks.

On August 21, 2017, Mr. McCann notified the employer that he would be starting another job effective September 1, 2017 and would thereafter only be available for the Saturday work from noon to 3:00 p.m., work with the same client on Fridays, from 4:00 p.m. to 7:00 p.m., and a Saturday overnight shift every other week, from 10:00 p.m. to 8:00 a.m.

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".

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.
2. Contribution rates based on benefit experience.
 - a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

(a) 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.

[Emphasis added.]

The evidence in the record establishes that Mr. McCann was able to work, available for work, and partially unemployed during the four-week period of August 6, 2017 through September 2, 2017. Mr. McCann's established conditions of employment with New Choices involved full-time until the employer ceased to make full-time work available. Mr. McCann continued to be available for full-time work throughout the four-week period that ended September 2, 2017. The claimant is eligible for the benefits he received for the four-week period of August 6, 2017 through September 2, 2017, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant for those four weeks.

The claimant has not made a claim for the week of September 3-9, 2017. Accordingly, the issues relating to the claimant's ability to work, availability for work, and whether the claimant was partially unemployed during that week are not ripe for adjudication. Only if the claimant makes a claim for that week or subsequent weeks will those issues needed to be adjudicated for the period beginning on or after September 3, 2017. This matter will be remanded to the Benefits Bureau for further action on the able, available, and partial unemployment issues, *if needed*, for the period beginning September 3, 2017.

DECISION:

The August 14, 2017, reference 01, decision is affirmed. The claimant was able to work, available for work, but partially unemployed during the four-week period of August 6, 2017 through September 2, 2017. The claimant is eligible for benefits for those weeks, provided he meets all other eligibility requirements. The employer's account may be assessed to the benefits paid to the claimant for those four weeks.

This matter is remanded to the Benefits Bureau for further action on the able, available, and partial unemployment issues, *if needed*, for the period beginning or after September 3, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs