

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARQUE WILLIAMS
Claimant

APPEAL NO. 14A-UI-03181-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WATTS, DEREK
Employer

OC: 02/16/14
Claimant: Appellant (4-R)

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages

STATEMENT OF THE CASE:

Marque Williams filed a timely appeal from the March 19, 2014, reference 06, decision that denied benefits effective February 16, 2014, based on an agency conclusion that he was not partially unemployed from his employment with Derek Watts. After due notice was issued, a hearing was held on April 15, 2014. Mr. Williams participated in the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUES:

Whether Mr. Williams had been partially unemployed from the employer with Derek Watts since he established the claim for benefits that was effective February 16, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marque Williams was hired by the family of Derek Watts, a person who suffered from a seizure disorder, to provide driving services to Derek Watts. Mr. Williams provided services to Mr. Watts on a part-time basis, approximately 10 hours per week. Mr. Williams most recently provided such services to Mr. Watts in 2012. After Mr. Watts underwent a surgery to address his seizure disorder, Mr. Watts no longer had need of services from Mr. Williams. Mr. Williams has not performed any services for Mr. Watts, or been asked to provide any services to Mr. Watts, since Mr. Williams established the claim for unemployment insurance benefits that was effective February 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

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).

Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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 does not establish that Mr. Williams has been partially unemployed from the employment with Derek Watts since Mr. Williams established the claim for benefits that was effective February 16, 2014. The reason the evidence does not establish partial unemployment from that employment is because the weight of the evidence indicates that the employer has had no need for Mr. Williams' services since 2012. The fact that Mr. Williams is not partially unemployed from Derek Watts should have no impact on his eligibility for benefits or on the issue of whether he is able and available for work, which issues will be addressed in a separate case number. The employer would have no liability for benefits under a theory of partial unemployment.

This matter will be remanded for adjudication of the separation from this employment and for determination of whether the quarter wage information the employer provided to Workforce Development is accurate as it relates to wages paid to Mr. Williams.

DECISION:

The claims deputy's March 19, 2014, reference 06, decision is modified as follows. The has not been partially unemployed from the employment with Derek Watts since the claimant established the claim for benefits that was effective February 16, 2014. The claimant has not performed any work for the particular employer since 2012. The fact that the claimant is not

partially unemployed from Derek Watts should have no impact on the claimant's eligibility for benefits or on the issue of whether the claimant is able and available for work, which issues will be addressed in a separate case number. The employer would have no liability for benefits under a theory of partial unemployment.

This matter will be remanded for adjudication of the separation from this employment and for determination of whether the quarter wage information the employer provided to Workforce Development is accurate as it relates to wages paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs