

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANNY K STONE
Claimant

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

APPEAL 21A-UI-16260-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/21
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Danny K Stone, the claimant/appellant, filed an appeal from the July 13, 2021, (reference 01) unemployment insurance decision that denied benefits as April 4, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2021. Mr. Stone participated and testified. Sue Stone, Mr. Stone's wife, observed the hearing. The employer participated through Kari Blick, office manager, Shelby Shepard, parts manager, and Tom Kuipier, Employers Unity LLC hearing representative. Claimant's Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Stone able to and available for work?
Is Mr. Stone temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stone began working for the employer on June 29, 2011. In March 2020, Mr. Stone was working as a full-time parts delivery driver. He was paid \$10.25 per hour.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic and a lack of work, the employer laid off Mr. Stone as of March 19, 2020. As of May 17, 2020, the employer had part-time work available for Mr. Stone. Mr. Stone returned to work on May 17, 2020 in his same position and same pay, but at only part-time hours. The employer continued to offer Mr. Stone only part-time hours through April 24, 2021. Mr. Stone never refused worked and he worked increased hours when the employer offered them to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Stone is partially unemployed from April 4, 2021, the effective date of his claim, through April 24, 2021.

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 § 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 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 Admin. Code r. 871-24.23(1), (10), and (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(26) 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.

Iowa Code section 96.7(2)a(2)(a) 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.

(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.

In this case, Mr. Stone is partially unemployed from April 4, 2021 through April 24, 2021. The employer reduced his hours due to the COVID-19 pandemic and he earned less than his weekly benefit amount plus fifteen dollars. Partial benefits are allowed during these weeks, as long as he is otherwise eligible.

The employer continuously offered Mr. Stone the same wages but reduced his hours because the COVID-19 pandemic led to less available work. Although the employer was not offering Mr. Stone the same employment at the time he was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account from April 4, 2021 through June 12, 2021. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment if the claim was filed before June 12, 2021. Mr. Stone's claim was filed effective April 4, 2021.

DECISION:

The July 13, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Stone. Mr. Stone is partially unemployed from April 4, 2021 through April 24, 2021. Benefits are allowed during these weeks, provided he is otherwise eligible. The employer is relieved of benefit charges during these weeks.



Daniel Zeno
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September 21, 2021
Decision Dated and Mailed

dz/mh