

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J KUHLE
Claimant

APPEAL NO. 11A-UI-11964-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAYSON ENTERPRISES INC
Employer

OC: 08/07/11
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 6, 2011, reference 01, that concluded he was ineligible for benefits because he was still employed for the same wages and hours as he was originally hired. A telephone hearing was held on October 5, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant ineligible for benefits because he was still employed for the same wages and hours as he was originally hired?

FINDINGS OF FACT:

The claimant filed a claim for benefits in August 2010 after his full-time employment with Mountaintop Stonework. After his full-time job ended, he took a part-time job working for the employer and received partial unemployment insurance benefits.

The claimant was filed for a second benefit year effective August 7, 2011. The claimant's benefits are based both on wages from Mountaintop Stonework and from the employer. The employer has continued to provide the same hours and wages as when the claimant was hired.

The claimant is filing for partial unemployment insurance benefits as his wages are less than he weekly benefit amount. He continues to look for full-time employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The Agency mistakenly treated this case as if the claimant's base-period wages were all from the employer and relied on 871 IAC 24.23(26) in denying benefits to the claimant. In fact, most of the claimant's base-period wages are from his full-time job with Mountaintop Stonework.

This section does not apply to the facts in this case where the claimant is applying for benefits after he was laid off by his regular employer. It should only be used when the claimant applies for partial unemployment insurance benefits from one base-period employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular 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.

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.

The employer's account is exempt from charge for benefits because the employer is providing the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated September 6, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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