

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM W MCCUNE
Claimant

APPEAL NO. 15A-UI-03562-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 02/15/15
Claimant: Respondent (1)

Iowa Code § 96.19-38-a & b – Total and Partial Unemployment
Iowa Code § 96.7-2-a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 12, 2015, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on April 28, 2015. Claimant participated personally. Employer participated by Whitney Smith McIntosh.

ISSUES:

Whether claimant is still employed at the same hours and wages and partially unemployed.

Whether claimant is able and available for work?

Whether employer's account is subject to charge?

FINDINGS OF FACT:

The claimant currently works for O'Reilly Auto Parts, a base period employer, part time. Claimant's original conditions for hire had claimant working twice the amount of hours that claimant was recently given. As work slowed over the winter hours claimant, who normally worked Monday through Thursday between 7am and 1 pm, was only given Monday and Tuesday hours to work. This is different than the terms and conditions as contemplated in the original contract of hire. Claimant also has other wages in the base period history. Claimant is now back to working his normal hours. Between the weeks of claimant's original claim and the week ending March 7, 2015, claimant only worked two days a week. Claimant is asking for partial unemployment during those weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and eligible for benefits.

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, 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.

An individual shall be deemed partially unemployed in any week in which 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 § 96.7(2)a(2) 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.

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 § 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under § 96.23, shall be charged

against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant has other base-period wages and is currently employed part time, claimant is considered to have been partially unemployed. Benefits are allowed. Inasmuch as the current part-time employer offered hours that different from the agreed to part-time hours, benefit charges shall be made to its account.

At all times claimant has remained able and available for work.

DECISION:

The March 12, 2015, reference 02, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. The account of the current part-time employer shall be charged as that employer did reduce hours from the agreed-to number of hours claimant had been accustomed to working.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs