

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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COMPASS OF CEDAR RAPIDS LLC
c/o ADP-UCS
PO BOX 6501
DIAMOND BAR CA 91765

Appeal Number: 05A-UI-08326-SWT
OC: 07/03/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.1(113)a – Layoff
871 IAC 24.23(26) – Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 9, 2005, reference 01, that concluded he was employed for the same hours and same rate of pay as his original contract of hire and was ineligible to receive partial unemployment insurance benefits. The parties stipulated that the record made of the telephone hearing held on August 10, 2005, could be used to decide this case. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant initially applied for unemployment insurance benefits with an effective date of July 4, 2004. His weekly benefit amount was determined to be \$228.00, based on his base period wages of second quarter 2003 (\$4,484.52), third quarter 2003 (\$958.66), fourth quarter 2003 (\$4,403.82), and first quarter 2004 (\$5,039). After filing his claim, he had two weeks in which he had no wages. Afterward, he continued filing claims each week, with wages varying from \$38.00 up to \$967.00. From July 4, 2004, to June 4, 2005, he had 20 weeks in which he earned less than his earnings

limit of \$243.00. The claimant filed a new claim for benefits for a second benefit year effective July 3, 2005. His weekly benefit amount was determined to be \$219.00, based on his base period wages of second quarter 2004 (\$4,485), third quarter 2004 (\$2,085), fourth quarter 2004 (\$5,054), and first quarter 2005 (\$5,046). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The claimant initially applied for unemployment insurance benefits with an effective date of July 4, 2004. His weekly benefit amount was determined to be \$228.00, based on this base period wages of second quarter 2003 (\$4,484.52), third quarter 2003 (\$958.66), fourth quarter 2003 (\$4403.82), and first quarter 2004 (\$5,039). After filing his claim, he had two weeks in which he had no wages. Afterward, he continued filing claims each week, with wages varying from \$38.00 up to \$967.00. From July 4, 2004, to June 4, 2005, he had 20 weeks in which he earned less than his earnings limit of \$243.00.

The employer is the management company for the U.S. Cellular Center, an event center located in Cedar Rapids, Iowa. The facility includes an arena and theater. The claimant has worked for the employer as the department head of the stagehand crew since June 1999. He was not guaranteed any specific number of hours or days of work per week when he was hired. He works according to schedules set forth a month in advance setting out the days and hours he is to work, which depend on what events are scheduled. The claimant normally has some scheduled work hours each week but the hours varied from week to week. Summer has traditionally been slower than the rest of the year.

During the week of June 5, 2005, the claimant reopened his claim for unemployment insurance benefits. During the week ending June 11, 2005, the claimant had \$163.00 in wages; the week ending June 18, he had \$128.00 in wages; the week ending June 25, he had \$535.00 in wages, and the week ending July 2, he had \$45.00 in wages. On June 26, 2005, the claimant worked his last event for the employer. At the time, there were no more events scheduled until late August 2005.

The claimant filed a new claim for benefits for a second benefit year effective July 3, 2005. His weekly benefit amount was determined to be \$219.00, based on his base period wages of second quarter 2004 (\$4,485), third quarter 2004 (\$2,085), fourth quarter 2004 (\$5,054), and first quarter 2005 (\$5,046).

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. In this case, the claimant has not been discharged and has not quit his job. He has been laid off due to lack of work as defined in 871 IAC 24.1(113)a: A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer asserted the claimant was an on-call, part-time employee and should not be eligible to receive benefits. The unemployment insurance rules provide that claimants who work solely on-call during their base periods are not considered unemployed workers. 871 IAC 24.22(2)l(3). In addition, claimants who are working part time at the same number of hours and wages as in their contract of hire and are not working a reduced workweek are not considered partially unemployed. 871 IAC 24.23(26). First, the law specifically provides that part-time employees can be eligible for unemployment insurance benefits. Iowa Code section 96.3-6. Next, on-call refers to someone who does not know in advance if they will be working or not and is called into work when needed. In this case, the claimant was a scheduled employee, but his schedule varied due to fluctuations in business. He is no different than most part-time workers. Few employers provide employees guarantees as to the number of hours they will work.

I conclude, however, during the weeks ending June 11, June 18, and July 2, 2005, the claimant was working part time at the same number of hours as his contract of hire. The claimant is filing benefits year-round to supplement his fluctuating hours, when he knew when he was hired that his hours would fluctuate. He will not be eligible for partial unemployment insurance benefits.

After July 2, 2005, the claimant is qualified to receive unemployment benefits because he is not working at all, which means that the disqualification for part time at the same number of hours as his contract of hire does not apply.

Iowa Code section 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 subject to charge for benefits paid after the week ending July 2, 2005, because the employer did not provide the claimant with the same employment as provided during the base period since the claimant has not worked since June 26, 2005. This non-charge statute addresses the situation where a person is working and receiving benefits. In this case, the claimant will receive benefits during a period of time that he is not working. This employer is no different from the construction company that lays workers off over the winter months because there are no construction projects available.

DECISION:

The unemployment insurance decision dated August 9, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits effective July 3, 2005, in weeks in which he is totally employed, if he is otherwise eligible.

saw/kjw