

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHON A CRAMER
Claimant

APPEAL NO: 12A-UI-02715-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

OC: 01/29/12
Claimant: Respondent (4)

Section 96.4-3 – Able and Available
871 IAC 23.43(4) – Supplemental Employment
Section 96.7-2-a – Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 15, 2012, reference 02, that held he was eligible for benefits effective January 29, 2012, and the employer was not relieved of benefit charges. A telephone hearing was held on April 3, 2012. The claimant participated. The employer did not participate.

ISSUES:

Whether claimant is able and available for work.

Whether the employer should be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant worked a full-time job for the employer from July 1, 2009 to May 13, 2011. The claimant accepted full-time employment at Iowa Select Farms on May 16, 2011, but agreed to work part-time, on-call for the employer. The claimant left Iowa Select Farms for a temporary job at Osage Manufacturing on August 18, which became full-time on September 26. Claimant continues to work for Osage Manufacturing through the date of this hearing, and he filed his unemployment claim due to an inventory slowdown the week ending February 4, 2012. The claimant has worked on a few occasions for the employer to the date of this hearing.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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....

The administrative law judge concludes that the claimant is eligible to receive benefits effective January 29, 2012, and due to supplemental employment the employer is relieved of liability for claimant's unemployment claim.

The claimant left his full-time job with the employer for other employment, but agreed to work on-call, which is considered supplemental employment. The supplemental employment provision of the Iowa employment security law allows a part-time employee to be eligible for benefits after separating from a regular employer while continuing to work part-time. Since claimant's supplemental employment is not the same as the wage credits he earned with the employer during the base period, the employer is relieved of benefit charges.

DECISION:

The department decision dated March 15, 2012, reference 02, is modified. The claimant is eligible for benefits effective January 29, 2012 as part-time, supplemental employment and the employer is relieved of liability. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw