

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTO RODRIGUEZ
Claimant

APPEAL NO. 09A-UI-05092-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STORY CONSTRUCTION CO
Employer

OC: 02-08-09
Claimant: Respondent (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 20, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 28, 2009. The claimant did not participate. The employer did participate through Mark Wieland, Safety Coordinator and Jan Lemaster, Payroll Administrator. Employer's Exhibit One was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a construction worker full time beginning April 7, 2007 through date of hearing as he remains an employee. The claimant was placed on a temporary layoff from February 6, 2009 through March 23, 2009 when he was called back to work and returned to work. During some of the time the claimant was on layoff he received temporary total disability benefits under the Iowa Workers' Compensation statute. The claimant was paid temporary total disability benefits from February 6 through March 10, 2009 but did not receive the actual benefits until February 25, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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".

The claimant was temporarily laid off and was available for work during the layoff. He returned to work when called back to do so.

Accordingly, benefits are granted.

The claimant received temporary total disability benefits during part of his layoff and properly reported those benefits to Iowa Workforce Development.

Iowa Code § 96.5(5) provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

871 IAC 24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

The claimant properly reported his receipt of temporary disability benefits to the agency.

DECISION:

The March 20, 2009, reference 01, decision is affirmed. The claimant is able to work and available for work effective February 6, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css