

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY I THOMPSON
Claimant

APPEAL NO: 12A-UI-13988-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

J F MCLAREN
Employer

**OC: 10/14/12
Claimant: Respondent (4)**

Section 96.19-16-I – Definition of Employer/Agricultural Labor
Section 96.19-18a (7)a – Definition of Employment/Agricultural Labor
Section 96.3-4 – Qualified Earnings

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 15, 2012, reference 02, that held the claimant was not discharged for misconduct on October 13, 2012, and benefits are allowed. A telephone hearing was held on December 24, 2012. The claimant participated. J. F. McLaren, Owner, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the claimant is an exempt agricultural laborer who worked for an exempt employer.

Whether claimant has qualified earnings to be eligible for benefits.

FINDINGS OF FACT:

The administrative law judge having heard the stipulation of the claimant and employer and having considered the evidence in the record, finds: A department field auditor issued a determination on November 20, 2012 the employer is a sole agricultural proprietorship that is non-labile for Iowa Unemployment Tax as it had less than ten workers at one time and paid less than \$20,000.00 gross wages per calendar quarter. The department issued a decision dated December 4, 2012, reference 03, that held claimant received non-covered wages (third quarter 2012) from the (agricultural) employer that was not appealed and it had now become final.

The department record shows claimant earned qualifying wages with Underground Specialty Employer No. 315023) during the base period of his unemployment claim and he received a department decision date November 5, 2012, reference 01, that allowed benefits by reason of his employment separation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19-18-a provides:

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by: . . .

The administrative law judge concludes the claimant performed agricultural labor for an unemployment tax exempt agricultural employer during the third quarter of 2012, and his earnings are not wages for insured work that can be considered in determining his unemployment benefit eligibility. See also Iowa Code sections 96.19-16-I and 96.19-18a-(7)a.

A department field tax auditor issued a determination that the employer is exempt from payment of an unemployment tax and the department issued a December 4 decision that confirmed claimant earned non-covered wages with the employer. Since claimant worked for an exempt employer, there is no separation from "employment."

Iowa Code section 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1,

paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

The administrative law judge further concludes claimant has sufficient base period earnings from employment with Underground Security (Employer No. 315023) to be monetary eligible for benefits. Since claimant received a favorable November 5, 2012 department decision on separation from this employment that has not been appealed, he is eligible for benefits without consideration of his earnings from an exempt agricultural labor employer.

DECISION:

The department decision dated November 15, 2012, reference 02, is modified. Claimant worked for an exempt agricultural labor employer and his earnings are not for insured work that would subject the employer to unemployment tax. The employer does not meet the definition of employer and the claimant's farm labor work does not meet the definition of employment. There is no separation from employment. Claimant has sufficient earnings from base period employment, and is entitled to receive benefits, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css