

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOUK, RANDY, L
Claimant

APPEAL NO. 12A-UI-14637-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THREE WISHES INVESTMENT
Employer

**OC: 03/25/12
Claimant: Respondent (5)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 3, 2012, reference 01, decision that allowed benefits beginning November 18, 2012, based on an agency conclusion that the claimant was able and available for work but on a short-term layoff. After due notice was issued, a hearing was held on January 15, 2013. Claimant Randy Houk participated. Sondra Little, Office Manager, represented the employer and presented additional testimony through Christi Post, Administrative Assistant. The administrative law judge took official notice of the agency's administrative record (DBRO) of benefits disbursed to the claimant and wages reported by or for the claimant.

ISSUES:

Whether Mr. Houk was able to work and available for work during the week that ended November 24, 2012 or the week that ended December 29, 2012.

Whether Mr. Houk was partially unemployed or temporarily laid off during the week that ended November 24, 2012 or the week that ended December 29, 2012.

Whether the employer's account may be assessed for benefits paid to the claimant for the two weeks in question.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Houk is employed by Three Wishes as a full-time laborer. His hourly wage is \$19.68. Mr. Houk's work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. The employer shut down operations on Thursday, November 22 and Friday, November 23, 2012 for the Thanksgiving Holiday. Mr. Houk worked Monday and Tuesday, November 19 and 20, but was absent due to illness on Wednesday, November 21, 2012. The employer recommenced production the next week and Mr. Houk returned to work the next week.

The employer shut down production during the week that ended December 29, 2012 and recommenced production on Wednesday, January 2, 2013.

For the week that ended November 24, 2012, Mr. Houk reported to Workforce Development that he was paid \$314.00 in wages. Mr. Houk received \$134.00 in unemployment insurance benefits for that week. For the week that ended December 29, 2012, Mr. Houk reported zero wages and received \$251.26 in benefits. Mr. Houk's weekly benefit amount was set at \$359.00. During the week that ended December 29, 2012, Mr. Houk exhausted his eligibility for regular statement benefits in connection with a claim year that had started on March 25, 2012.

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".

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. Iowa Code Section 96.19(38)(b).

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 section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

(a) 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 section 96.8, subsection 5.

[Emphasis added.]

The employer challenges Mr. Houk's eligibility for benefits for the week ending November 24, 2012, based on his absence due to illness on Wednesday, November 21, 2012. The employer only had three days of work for Mr. Houk that week. Mr. Houk was available for work for two of those three days. Because Mr. Houk was available for work for the majority of the work week that ended November 24, 2012, he met the work ability and availability requirement for that week. See Iowa Admin. Code rule 871-24.23(29). Because the employer did not have work for Mr. Houk on Thursday or Friday, November 22 and 23, and because Mr. Houk's wages for the week did not exceed his weekly benefit amount plus \$15.00, Mr. Houk was partially unemployed that week. See Iowa Code Section 96.19(38)(b). Mr. Houk was eligible for benefits for the week that ended November 24, 2012 provided he was otherwise eligible. The employer's account may be charged for those benefits.

The evidence indicates that the employer was shut down and that Mr. Houk was temporarily laid off and unemployed during the week that ended December 29, 2012. Mr. Houk is eligible for benefits for that week, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's December 3, 2012, reference 01 modified as follows. The claimant was able and available for work, but partially laid off during the week that ended November 24, 2012. The claimant is eligible for benefits for that week, provided he is otherwise eligible. The employer's account may be charged. The claimant was able and available for work, but temporarily laid off during the week that ended December 29, 2012. The claimant is eligible for benefits for that week, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs