

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE R PIGMAN
Claimant

APPEAL NO. 08A-UI-09466-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DAYTON
Employer

**OC: 08/24/08 R: 01
Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Wayne Pigman filed a timely appeal from the October 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 30, 2008. Mr. Pigman participated. The employer submitted a written statement in lieu of participating in the hearing, which statement was received into the record as Exhibit One. Exhibit A was also received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant, benefits disbursed to the claimant, and Agency administrative records concerning claimant's approval for department-approved training.

ISSUE:

Whether the claimant is subject to and/or has satisfied the work availability requirements of Iowa Code section 96.4(3) since he established his claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wayne Pigman commenced his employment with the City of Dayton on July 27, 2006 and worked as a part-time law enforcement officer until the Iowa National Guard summoned him to active duty in July 2007. The Iowa National Guard deployed Mr. Pigman to Kosovo. Mr. Pigman was honorably discharged from active military service on August 22, 2008. Mr. Pigman had returned to Iowa approximately one month prior to his discharge date. Mr. Pigman returned to his same part-time employment for the City of Dayton in August 2008. Mr. Pigman continues in this employment and neither Mr. Pigman nor the employer contemplates a change in the employment in the foreseeable future.

Mr. Pigman established a claim for unemployment insurance benefits that was effective August 24, 2008. Mr. Pigman's application for benefits was prompted by his loss of full-time wages upon being honorably discharged from full-time active military duty. Mr. Pigman's base period wage credits are based on his part-time employment with the City of Dayton and his full-time active military duty. Workforce Development calculated Mr. Pigman's weekly benefit amount at \$422.00. This amount included \$47.00 per week in regular unemployment insurance

benefits and \$375.00 per week in federal unemployment insurance benefits. For the six-week period of August 24 through October 4, 2008, Mr. Pigman reported to Workforce Development his weekly wages from the part-time employment and received unemployment insurance benefits. Each week the amount disbursed to Mr. Pigman was based on the full benefit amount minus the reported wages. The total amount of regular unemployment insurance benefits disbursed was \$240.00. The total amount of federal benefits disbursed was \$1,699.00.

In September, Workforce Development approved Mr. Pigman for department-approved training. The approval was made retroactive to the benefit week that ended August 30, 2008. The period covered by the department approved training will end December 20, 2008. The approval for department approved training was based on Mr. Pigman's enrollment in full-time college coursework at Iowa Central Community College leading toward an Associate of Arts Degree. At present, the coursework is exclusively Internet based.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence indicates that Mr. Pigman's separation from his full-time active military duty would not disqualify him for unemployment insurance benefits. See 5 U.S.C. Sections 8502 and 8521.

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".

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

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.

871 IAC 23.43(4)(a) provides, in relevant part, as follows:

Supplemental employment.

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 weight of the evidence indicates that Mr. Pigman's part-time employment with the City of Dayton qualifies as part-time supplemental employment. Accordingly, Mr. Pigman's continued part-time supplemental employment with the City of Dayton would not prevent him from being eligible for unemployment insurance benefits. The City of Dayton would not be liable for benefits, so long as Mr. Pigman continues in the employment under the same terms and conditions. If there is a separation from the employment, Workforce Development would need to determine at that point the impact of the separation on Mr. Pigman's unemployment insurance eligibility and the City of Dayton's liability for benefits.

Workforce Development rule 871 IAC 24.39 provides as follows:

Department-approved training or retraining program. The intent of department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

Workforce Development rule 871 IAC 24.43(7), provides as follows:

Department-approved training. A claimant who qualifies and is approved for department-approved training shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

The evidence indicates that Workforce Development has approved Mr. Pigman for department approved training from the benefit week ending August 30, 2008 through December 20, 2008. Accordingly, Mr. Pigman is exempted from the work search and work availability requirements

of Iowa Code section 96.4(3). In addition, the employer would not be liable for any benefits paid to the claimant during the period of department-approved training.

DECISION:

The Agency representative's October 9, 2008, reference 01, is modified as follows. The claimant's continued part-time supplement employment does not disqualify the claimant for unemployment insurance benefits. The employer shall not be charged for benefits paid to the claimant, so long as he continues in the part-time supplemental employment. The claimant is approved for department-approved training for the period of August 24, 2008 through December 20, 2008. The claimant is not subject to the work availability and work search requirements of Iowa Code section 96.4(3) while he continues in department-approved training. The employer shall not be charged for benefits paid to the claimant while he participates in department-approved training. The claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw