

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORDAN FORD
Claimant

MCSOIFERS INC
Employer

APPEAL 21A-UI-06238-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment

STATEMENT OF THE CASE:

On February 19, 2020 (employer/appellant) filed an appeal from the February 16, 2020, reference 01, unemployment insurance decision that concluded he was eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 6, 2021. Claimant participated and testified. Employer participated through Director of Operations Randy Betsinger and General Manager Karla Buchholz.

ISSUES:

1. Is the claimant partially unemployed and available for work?
2. If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

The claimant currently works for, McSoifers, the only employer in his base period; part-time but his hours do not reflect the hours he received during his base period. The claimant also does not have other potentially qualifying wages in the base period history. In 2020 and 2021, the claimant's availability changes explain the difference in this history of employment.

Prior to 2020, the claimant's mother worked at the same location and carpooled with her for transportation. Prior to 2020, the claimant's availability was from 8:00 a.m. to 7:00 p.m.

In early 2020, the claimant lost his license and was having transportation issues. This affected his availability to be 8:00 a.m. to 2:00 p.m. Monday through Friday with no weekends. In 2020,

the claimant's mother stopped working for, McSoifers, which made it difficult for the claimant to commute to work.

On April 20, 2020, the claimant said he only wanted to work 15 to 20 hours per week.

In February 2021, the claimant applied for his driver's license. He had to show gainful employment to get his license.

In early-March 2021, the claimant and General Manager Karla Buchholz made an arrangement to steadily increase availability to return to his previous schedule of claimant's availability was from 8:00 a.m. to 7:00 p.m. Monday through Friday with weekends.

After March 27, 2020, the claimant has been maintaining the hours he received in his base period, by maintaining his availability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and but he unduly restricted his availability, so this employer is not subject to charge.

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 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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 Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (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.

In this case, the claimant is partially unemployed for the weeks he made weekly claims from January 9, 2021 to March 27, 2021. The administrative law judge also agrees with the representative that the claimant's level of employment is not consistent with the base period wage history with this employer. However, the claimant's availability changed significantly for most of 2020. Indeed, the claimant agreed to restrict his availability beginning in April 2020 to between 15 and 20 per hour, due to transportation issues. Since the claimant has obtained a license, he has been able to return his availability to what it was in his base period. These reductions in his availability disqualify him for benefits under Iowa Admin. Code r. 871-24.23(16).

It bears noting that partial unemployment cases are easier to resolve if the parties are prepared to testify to the period in question.

DECISION:

The February 16, 2021, (reference 01) unemployment insurance decision is reversed. The claimant is partially unemployed and his wages do not reflect those received during this base period, but this reduction is due to his availability being unduly restricted which disqualifies him under Iowa Admin. Code r. 871-24.23(16). Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 28, 2021
Decision Dated and Mailed

smn/ol