

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERTO MARTINEZ
Claimant

APPEAL NO. 20A-UI-11086-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH CEDAR TRUCKING LLC
Employer

OC: 06/14/20
Claimant: Respondent (1R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 25, 2020, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on October 30, 2020. Claimant participated personally. Employer participated by Kristina Nelson and Holly Poduska. Employer's exhibits 1-7 were admitted into evidence.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The claimant worked for North Cedar Trucking, a base period employer, part time as a mail driver. In June of 2020, the USPS decided to reduce a number of routes that affected employer's routes given to employees. Employer stated that claimant's regular route that he'd driven for at least the previous year was altered by the USPS decision and as a result claimant worked fewer hours than he had been working. Employer did show documentation that

claimant was contacted a few times to fill in for the hours missed and claimant had declined those hours. This occurred after employer unilaterally reduced claimant's hours and route.

Claimant has since quit his employment on September 30, 2020.

Claimant has received state unemployment benefits in this matter of \$5,703.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$3,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

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.

Because the claimant has been removed from the full time route he'd run for over a year period of time as a result of employer changing his regular hours of work, claimant is considered partially unemployed. Benefits are allowed for the hours claimant was not receiving.

DECISION:

The August 25, 2020, reference 02, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. This matter is remanded to the fact finder for a determination as to whether the job separation which occurred between the parties on September 30, 2020 is disqualifying from the receipt of benefits.



Blair A. Bennett
Administrative Law Judge

November 3, 2020
Decision Dated and Mailed

bab/mh