

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH R BOELTER
Claimant

APPEAL 17A-UI-11107-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS – REGIS MIDDLE SCHOOL
Employer

**OC: 10/01/17
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the October 19, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2017. Claimant participated. Employer Regis Middle School (Regis) participated through principal Beth Glovokan. Iowa Catholic Conference hearing representative Paul Jahnke appeared for the employer.

ISSUES:

Is the claimant able to work and available for work effective October 1, 2017?
Is claimant considered partially or fully unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time school activities bus driver for Regis middle school. During the week of September 11, claimant shared some health concerns with principal Beth Glovokan and told her he may need some time off. She said they would look for others to help with the driving schedule. Claimant returned on September 27 said he was able to return to work but had concerns about middle school germs and asked if it would be okay for him to wear a mask around the children. Glovokan said it would be and they would explain the matter to them. She told him the driver schedule was already filled through October. The same day, supervisor/activities secretary Tracey Chute at Regis told him he had been replaced by two other drivers. She did not give a reason but implied it was because of his medical issue. Neither Glovokan or Chute requested a medical release or documentation. Glovokan testified that the employer did not ask him to drive since September 27 because he filed an unemployment insurance benefits claim. Neither party communicated about his employment status and whether there had been a separation. Claimant still has the bus keys and has not been asked to return them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective October 1, 2017.

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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. 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 . . .

Because the claimant is not currently employed under the same hours and wages as contemplated at hire, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

Partial benefits based upon payment of gross wages are calculated using the following formula found in the Unemployment Insurance Benefits Handbook at page 21:

Example: An individual's WBA is \$400 and they earn \$370.

- 25% of \$400 is \$100. \$100 is not deducted from the WBA.
- $\$370 - \$100 = \$270$. The remaining \$270 is deducted from the WBA.
- $\$400 - \$270 = \$130$.
- \$130 is the payment amount for the week.

DECISION:

The October 19, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. He is required to report gross wages earned for each week of benefits claimed. The employer's account Regis (108530-191) may be liable for charges.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs