

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY R BRITTAIN

Claimant

APPEAL 18A-UI-00261-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WEITZ CONSTRUCTION COMPANY IN

Employer

OC: 11/26/17

Claimant: Appellant (4)

Iowa Code § 96.19(38)b – Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 2, 2018, (reference 01) unemployment insurance decision that denied benefits as of November 26, 2017. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2018. Claimant participated. Employer did not register for the hearing and did not participate. Official notice was taken of the administrative record with no objection.

ISSUES:

Is the claimant eligible to receive partial benefits?

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant works for the employer (THE WEITZ CONSTRUCTION COMPANY IN), a base period employer, but is currently on a layoff. Claimant is a full-time labor foreman for the employer and is in charge of all the laborers on the job site. Claimant is a part of the Labor Union 177.

On November 30, 2017, the employer told claimant he was being placed on a layoff starting December 1, 2017. Claimant was paid through December 1, 2017 at his normal hours and wages. Claimant normally worked Monday through Friday, with occasional Saturdays and Sundays. Claimant understood that almost everyone, including himself, was being laid off due to a lack of work for the job. The employer did not have another job site to place claimant on.

Claimant was informed that his layoff would be for at least a month and a half, possibly two months. Claimant is able to and available for work if there is work available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work for the week ending December 2, 2017. Benefits are denied for the one-week ending December 2, 2017. Claimant is able to work and available for work effective December 3, 2017. Benefits are allowed effective December 3, 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. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Claimant filed his claim with an effective date November 26, 2017. During the week beginning November 26, 2017, claimant worked through Thursday, November 30, 2017. The employer paid claimant through December 1, 2017. As of December 1, 2017, the employer placed claimant on a temporary layoff.

Claimant has established that he is able to and available for work effective December 3, 2017. Claimant has not yet been recalled by the employer. Because claimant worked a majority of the work week for the week-ending December 2, 2017, he was not available for work that one week and benefits are denied for the one-week ending December 2, 2017. See Iowa Admin. Code r. 871-24.23(23). However, claimant is able to and available for work effective December 3, 2017 and benefits are allowed effective December 3, 2017.

DECISION:

The January 2, 2018, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant was not available for work for the week ending December 2, 2017. Benefits are denied for the one-week ending December 2, 2017. Claimant is able to work and available for work effective December 3, 2017. Benefits are allowed effective December 3, 2017, provided the claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs