

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON YOERGER
Claimant

C2C INC
Employer

APPEAL 21A-UI-09199-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the March 22, 2021 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits because he was still working on call or part-time and the employer was not offering the same pattern of employment as in his base period. The parties were properly notified of the hearing. A telephone hearing was held on July 22, 2021. The claimant participated personally. The employer participated through witness David LaFave. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on August 5, 2019 as a full-time over the road truck driver. This employer and Central Petroleum Transport Inc. are owned by the same owners; however, they are separate entities.

In May of 2020, the claimant spoke to Mr. LaFave about wanting to be able to be home each night with his family instead of driving overnight loads. Mr. LaFave informed him about a driving position with Central Petroleum Transport Inc. that would ensure that he was home each night. He explained that the hours would vary based upon loads and there was no guarantee of a certain number of hours per week. Claimant separated from employment with this employer on May 29, 2020 to accept employment with Central Petroleum Transport Inc., which he began on June 2, 2020. Claimant was not working full-time hours with Central Petroleum Transport Inc.

based upon the varied schedule of loads that was explained to claimant when he accepted the position.

Claimant filed an initial claim for unemployment insurance benefits effective May 31, 2020 due to the fact he was earning less wages for the new employer. Claimant reported wages earned each week when filing his weekly-continued claims; however, it is unclear whether the claimant reported the correct gross earnings each week rather than the amounts he was paid in his paycheck.

Claimant filed weekly continued claims for benefits from May 31, 2020 through July 25, 2020 when he was injured and began receiving worker's compensation benefits. Following his recovery from his worker's compensation injury, the claimant returned to working full-time with this employer in November of 2020.

Claimant has received regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits from May 31, 2020 through July 25, 2020. The issue of whether the claimant has been overpaid regular and FPUC benefits will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.19(38) was replaced by Iowa Code § 96.1A(37). Iowa Code § 96.1A(37) provides as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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 § 96.7(2)a(2)a provides:

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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this case, claimant was hired as a driver for Central Petroleum Transport Inc. knowing that the hours of work would vary and that he was not guaranteed to work full-time. Claimant accepted this position knowing the hours would vary because he wanted to spend more time with his family. Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law.

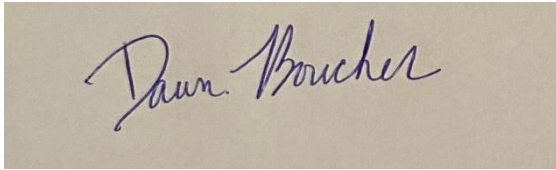
When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continued to provide the claimant with the same hours and wages as contemplated when he was hired, he is not considered partially unemployed. Benefits are denied effective May 31, 2020 as the claimant was still employed part-time for the same hours and same wages as his original contract of hire. Because benefits are denied, no charges shall accrue to the employer's account.

DECISION:

The March 22, 2021 (reference 01) decision is reversed. Claimant is not totally, partially, or temporarily unemployed as he was still employed in his part-time job for the same hours and wages as his original contract of hire during the weeks in which he filed his weekly-continued claims for benefits. Benefits are denied effective May 31, 2020.

REMAND:

The matter of whether the claimant was overpaid regular unemployment insurance benefits and FPUC benefits for the weeks between May 31, 2020 and July 25, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

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Dawn Boucher
Administrative Law Judge

July 29, 2021
Decision Dated and Mailed

db/lj

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- You will need to apply for PUA to determine your eligibility under the program. For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>. If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. PUA claims may be backdated prior to June 12, 2021 depending on eligibility requirements. Additional information can be found at: <https://www.iowaworkforcedevelopment.gov/COVID-19>