

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRUCE PREGLER

Claimant

**ENVIRONMENTAL MANAGEMENT
SERVICES**

Employer

APPEAL 20A-UI-12599-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20

Claimant: Appellant (2)

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) Total and Partial Unemployment
Iowa Code § 96.7(2)A(2) Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On October 9, 2020 the claimant filed an appeal from the October 6, 2020, (reference 01) unemployment insurance decision that denied partial unemployment benefits based on a determination that he was still employed at the same hours and wages as in his original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2020. Claimant participated. Employer participated through its owner, Mark Hogan.

The administrative law judge took official notice of the following administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since March 22, 2002. The claimant currently works for the employer as a full-time asbestos supervisor with an hourly rate of \$22.50. Claimant received a minimum of 40 hours per week. Claimant's immediate supervisor is Owner Mark Hogan.

Over the summer, the employer's business drastically slowed down. In July 2020, claimant initially exhausted his paid time off to cope with this downturn in its business operations. After exhausting his paid time off on August 30, 2020, claimant was told by his employer that he would work every other week going forward until business demands returned to normal.

Under this plan, claimant's first week in which he was laid off was August 31 through September 5, 2020. Claimant was offered work and worked the following week from September 5, 2020 to September 12, 2020. Claimant was not offered work the week of September 12, 2020 to September 19, 2020. Claimant was offered work and worked the week of September 19, 2020 to September 26, 2020. The employer did not offer work for claimant the following two weeks beginning on October 3, 2020 and ending on October 17, 2020. This was the final week claimant was subject to employer's layoff plan. Claimant would have worked for the weeks he was subject to the layoff instructions if work had been available.

After October 10, 2020, claimant has continued to work for the employer according to his regular hours and hourly rate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was totally unemployed and able to and available for work for the weeks ending September 5, September 19, October 10, and October 17, 2020.

Iowa Code § 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(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.

Iowa Code section 96.7(2)a(2) 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 order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he is able to and available for work. Iowa Code § 96.4(3).

The first issue to determine is whether claimant was totally, partially or temporarily employed. Claimant was totally unemployed and able to and available for work for the weeks ending September 5, September 19, October 10, and October 17, 2020.

The second issue for these claims periods is whether claimant was able to and available for work. The claimant was able to and available for work during the weeks in question, however, the employer did not have work available.

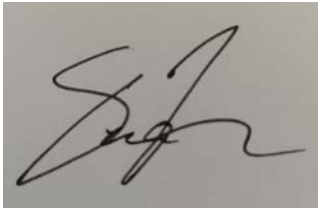
The third issue to determine is whether claimant is still employed at the same hours and wages. With the exception of the periods subject to the employer's layoff plan, claimant was employed at the same hours and wages.

The fourth issue to determine is whether the employer's account is subject to charge. Claimant did not work for any other employer and his hours were impacted due to this employer's

business downturn. This employer is subject to charge for benefits claimant is granted during the weeks he was totally unemployed due to the employer's layoff plan.

DECISION:

The October 6, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was able to work and available for the weeks ending September 5, September 19, October 10, and October 17, 2020. Claimant did not work for another employer during the claim period so the employer's account is subject to charge. Regular unemployment insurance benefits funded by the state of Iowa are granted.



Sean M. Nelson
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December 30, 2020
Decision Dated and Mailed

smn/scn