

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

WARREN D ABBOTT
Claimant

APPEAL NO. 09A-UI-02943-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PROFESSIONAL BUILDING SERVICES
OF THE QUAD CITIES INC**
Employer

**Original Claim: 01-18-09
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 19, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 19, 2009. The claimant did participate along with his witness, Nathan Keckx, Janitor, and was represented by Catherine Alexander, Attorney at Law. The employer did participate through Kathy Whitcher, Operations Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant able to and available for work and was the claimant partially unemployed?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a janitor, part-time, beginning April 5, 2005, through date of hearing, as he remains an employee of employer.

The claimant was hired to work as a janitor at a golf club for two and one-half hours per day, or twelve and one-half hours per week. During the period from January 11 through February 10, the golf course was closed and no work there was available for the claimant. In the past when the golf course has shut down, the employer would call the claimant and provide him with other work assignments so he could work his twelve and one-half hours per week. When the claimant was told by Daniel Ciara (his supervisor) that the golf course would be closing temporarily, he was also told that no other assignments were available for him. Mr. Ciara did not tell the claimant that he needed to call anyone in the office, including Ms. Whitcher, to find additional assignments.

Nathan Keckx also worked as a janitor at the golf club and he too was told by Mr. Ciara that the golf club would be closing down temporarily and that no further assignments were available for him.

From January 11, 2009 through February 10, 2009, the employer did not have work available for the claimant as contemplated in the original contract of hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the five weeks ending February 14, 2009.

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 § 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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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.

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.

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.

Because the claimant was employed less than his regular hours, he was considered partially unemployed for the period from January 11, 2009 through February 10, 2009. 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 of hire, it may be liable for benefit charges to its account.

DECISION:

The February 19, 2009, reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. The account of employer (account number 218725) may be liable for charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw