

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMOS M WRIGHT JR
Claimant

LUX ELECTRIC LLC
Employer

APPEAL NO. 20A-UI-01880-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Respondent (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and/or Partial Unemployment
Iowa Code Section 96.7(2)(a)(2)(a) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 18, 2020, reference 02, decision that allowed benefits to the claimant effective January 26, 2020 provided the claimant was otherwise eligible and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was able to work, available for work, but partially and/or temporarily unemployed. After due notice was issued, a hearing was held on March 18, 2020. Claimant Amos Wright did not provide a telephone number for the hearing and did not participate. Dustin Welshons represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the benefit week that ended February 1, 2020 and during the benefit week that ended February 29, 2020.

Whether the claimant was temporarily and/or partially unemployed during the benefit week that ended February 1, 2020 and during the benefit week that ended February 29, 2020.

Whether the employer's account may be charged for benefits in connection with the benefit week that ended February 1, 2020 and the benefit week that ended February 29, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dustin Welshons owns and operates Lux Electric, L.L.C. The employer hired claimant Amos Wright, Jr., for temporary, full-time employment that began on December 26, 2019. The employer has had no contact with Mr. Wright since the end of January 2020. The employer most recently had work for Mr. Wright during the week of January 26-31, 2020. The employer paid Mr. Wright a \$25.00 hourly wage. During the week of January 26-31, 2020, the employer had 28 hours of work for Mr. Wright, for which the employer paid \$700.00 in wages.

Mr. Wright established an original claim for unemployment insurance benefits that was effective December 22, 2019. Mr. Wright's "base period" for purposes of the claim consists of the third and fourth quarters of 2018 and the first and second quarters of 2019. Lux Electric, L.L.C. is not a base period employer in connection with the claim year that began for Mr. Wright on December 22, 2019 and that will end for Mr. Wright on or about December 20, 2020. Mr. Wright's sole base period employer was Knight Electric, L.L.C., for whom Mr. Wright worked full-time until he separated from the employer in December 2019. Iowa Workforce Development has not disbursed any benefits to Mr. Wright in connection with the original claim that was effective December 22, 2019.

Mr. Wright has only filed two weekly claims since he established the December 22, 2019 original claim for benefits. Mr. Wright made a weekly claim for the benefit week that ended February 1, 2020. For that week, Mr. Wright reported zero wages and \$25.00 in holiday pay. Mr. Wright did not report the \$700.00 in wages earned from the Lux Electric employment during that week. For the week that ended February 29, 2020, Mr. Wright reported zero wages and received no benefits. For each of the two weeks, Mr. Wright reported that he was not employed, that he was able to work and available for work, and that he had made four employer job contacts.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits 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.

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Because Lux Electric is not a base period for purposes of the claim year that started for Mr. Wright on December 22, 2019, the employer account of Lux Electric is not subject to being charged for benefits in connection with Mr. Wright's current claim year.

The administrative law judge need only address the two weeks for which Mr. Wright made a weekly claim. For the week that ended February 1, 2020, Mr. Wright was still employed in full-time, temporary employment, received only 28 hours of work, but had \$700.00. The evidence in the record establishes that Mr. Wright was available for full-time work with the employer that week and able to perform full-time work for the employer that week. Because the employer had work for Mr. Wright that week, Mr. Wright was not temporarily unemployed that week. Though the employer had less than full-time hours for Mr. Wright that week, Mr. Wright's wages exceeded his \$481.00 weekly benefit amount by more than \$15.00, meaning that Mr. Wright cannot be deemed partially unemployed during that week. Mr. Wright was not eligible for benefits for the week that ended February 1, 2020.

The evidence in the record fails to establish that Mr. Wright met the ability to work and availability for work requirements during the benefit week that ended February 29, 2020. Mr. Wright did not participate in the appeal hearing and presented no evidence concerning whether he was able to work, whether he was available for work, or whether he was engaged in an active and earnest search for new full-time employment that week. The evidence establishes that Mr. Wright was separated from Lux Electric, L.L.C. before the benefit week of

February 23-29, 2020 and therefore cannot be deemed temporally or partially unemployed from Lux Electric for that week. Mr. Wright is not eligible for benefits for the week that ended February 29, 2020.

DECISION:

The February 18, 2020, reference 02, decision is modified in favor of the employer as follows. The employer is not a base period employer for purpose of the December 22, 2019 original claim and, therefore, the employer's account is not subject to charges in connection with the benefit weeks addressed in this decision or during the claimant's current benefit year. During the week that ended February 1, 2020, the claimant was able to work, was available for work, but was neither temporarily unemployed nor partially unemployed. The claimant is not eligible for benefits for the week that ended February 1, 2020. During the week that ended February 29, 2020, the claimant was separated from this employer. The claimant has not shown that he was able to work and available for work during the week that ended February 29, 2020 and, therefore, is not eligible for benefits for that week. The scope of this decision is limited to the period that ended February 29, 2020.

This matter is remanded to the Benefits Bureau for adjudication of the separation that occurred on or about January 27, 2020.



James E. Timberland
Administrative Law Judge

March 27, 2020
Decision Dated and Mailed

jet/scn