

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A RAUSCH
Claimant

APPEAL NO. 12A-UI-14394-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

**OC: 12/25/11
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

James Rausch filed a timely appeal from the November 28, 2012, reference 01, decision that denied benefits effective October 21, 2012 based on an agency conclusion that Mr. Rausch was not partially unemployed from Seventh Avenue, Inc. After due notice was issued, a hearing was held on January 7, 2013. Mr. Rausch participated. Lynn Rankin, Human Resources Assistant Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record (DBRO) of wages reported by or for the claimant and benefits disbursed to the claimant.

ISSUES:

Whether Mr. Rausch was available for work during the day two-week period of October 21, 2012 through November 3, 2012. He was.

Whether Mr. Rausch was partially unemployed or temporarily unemployed from Seventh Avenue, Inc., during the two-week period of October 21, 2012 through November 3, 2012. Mr. Rausch was temporarily unemployed from Seventh Avenue, Inc., during the week that ended October 3, 2012.

Whether the employer's account may be charged for benefits paid to Mr. Rauch during the period of temporary unemployment. The employer's account may be charged for benefits paid to Mr. Rausch for the week ending November 3, 2012, because the employer did not have work available for the claimant during that week.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Rausch began his employment with Seventh Avenue, Inc., in 2007 and continues in the employment. Mr. Rausch is a part-time order picker/forklift operator. His work hours are Monday, Tuesday, Wednesday 7:00 a.m. to 3:00 p.m. During the week that ended October 27, 2012, Mr. Rausch worked his regular hours and earned \$325.00 in wages. Mr. Rausch overstated the wages by \$15.00 when he reported the weekly wages to workforce development.

During the week that ended November 3, 2012, Mr. Rausch was available to work his regular hours, but the employer did not have work for Mr. Rausch.

Towards the end of the week that ended October 27, Mr. Rausch learned that the employer would not have work for him the next week. With that information, Mr. Rausch contacted workforce development to establish an additional claim for benefits. Though Mr. Rausch intended for the claim to be effective during the week that started October 28, 2012, based on the timing of Mr. Rausch's contact with the agency, the agency deemed the additional claim effective October 21, 2012. Mr. Rausch discontinued his claim for benefits after the week that ended November 3, 2012. Mr. Rausch's weekly benefit amount is set at \$194.00. Mr. Rausch has thus far received no benefits for the two weeks that the claim was deemed active.

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".

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 96.19(38)(c).

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 \$15.00. Iowa Code section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.

[Emphasis added.]

The evidence in the record establishes that Mr. Rauch was able and available for work during the two weeks when his claim for unemployment insurance benefits was active. During the week that ended October 27, 2012, Mr. Rausch worked his regular hours, earned wages that exceeded his weekly benefit amount by more than \$15.00, and therefore was not eligible for unemployment insurance benefits. During the week that ended November 3, 2012, Mr. Rausch was temporarily unemployed, earned no wages from the employment, and was eligible for unemployment insurance benefits provided he met all other eligibility requirements. The employer's account may be charged for the benefits to be paid to Mr. Rausch for the week that ended November 3, 2012. Because the claim for benefits was discontinued after the week that ended November 3, 2012, there is no need for the administrative law judge to address issues of work availability, partial unemployment, or temporary unemployment beyond the week that ended November 3, 2012.

DECISION:

The Agency representative's November 28, 2012, reference 01, is modified as follows. The claimant was not eligible for unemployment insurance benefits during the week that ended October 27, 2012, because he was neither partially unemployed nor temporary unemployed. During the week that ended November 3, 2012, the claimant was able and available for work, temporarily unemployed, and eligible for unemployment insurance benefits provided he met all other eligibility requirements. The employer's account may be charged for benefits disbursed to the claimant for the week ending November 3, 2012.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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