

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KALE P FREILINGER**

Claimant

**NORTHEAST IOWA COMMUNITY COLLEGE**

Employer

**APPEAL NO: 12A-UI-10325-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/15/12**

**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available  
871 IAC 23.43(4)a – Supplemental Employment  
Section 96.7-2a(2) – Relief of Charges

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 20, 2012, reference 02, that held he was not eligible for benefits effective July 15, 2012, as he was still employed at the same job. A telephone hearing was held on September 19, 2012. The claimant participated. Julie Huiskamp, HR/Executive Director, participated for the employer.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The issue is whether the employer should be relieved of benefit charges.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant last worked for his regular base period employer, VFW Club Inc. (ER#033033) about September 1, 2011. He began some part-time as-needed work for the employer as mentor to a disabled student on September 16. He then began some part-time work through the employer continuing education department about January 25, 2012. He was last paid for part-time work on May 31, 2012.

Claimant was not offered any part-time work during the summer due to lack of available students. The department issued decisions on January 12, 2012 and July 25 that he has been granted department approved training. The most recent decision covers the period from August 26, 2012 through December 8. Claimant recently accepted a part-time assignment to mentor a student two hours a week on August 20 and continues to perform this work through the date of this hearing. The employer still considers him a part-time employee on as-needed basis.

## 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 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.

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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The administrative law judge concludes that claimant is eligible for benefits effective July 15, 2012 as he separated with good cause from his regular employer in September 2011, and continues to receive the same part-time employment from the employer starting in his base period and continuing through the date of this hearing.

There is no availability disqualification because claimant has been granted division approved training. The employer's account is granted a relief of charges, and no employer's account is charged while claimant is in training.

**DECISION:**

The department decision dated August 20, 2012, reference 02, is modified. The claimant is eligible for benefits effective July 15, 2012, as there is no availability issue and he is receiving supplemental part-time employment. The employer is granted a relief of charges, and no employer's account is charged while claimant remains in training.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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