

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT M MYERS
Claimant

APPEAL 21A-UI-17757-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOB'S CUSTOM TROPHIES INC
Employer

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
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:

On August 11, 2021, the claimant/appellant filed an appeal from the August 4, 2021, (reference 03) unemployment insurance decision that disallowed benefits based on claimant still being employed in his job for the same hours and wages as original contract of hire. Benefits denied as of June 21, 2020. The parties were properly notified about the hearing. A telephone hearing was held on November 1, 2021. The hearing was held together with appeals 21A-UI-17756-CS-T and 21A-UI-17758-CS-T, and together they were combined into one record. Claimant was present and participated through attorney, Kellie Paschke. Employer participated through Owner, Eric Held. Administrative notice was taken of claimant's unemployment insurance benefits.

ISSUES:

Is the claimant able to work and available for work?

Does the claimant meet the definition of being considered partially unemployed?

Does the claimant meet the definition of being considered totally unemployed?

Does the claimant meet the definition of being temporarily unemployed?

Is claimant employed for 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 began working for employer in May 2016. Claimant last worked as a part-time designer and engraver. The claimant was hired to work a minimum of three days a week. The claimant was guaranteed nine hours per shift (a total of 27 hours per week). When claimant was hired he was paid \$14.00 per hour.

On March 15, 2020, the employer notified its employees that it was furloughing them due to the government shutting down all non-essential businesses. The employer's business was deemed an essential business but the employer reduced its workforce because their business had dropped substantially due to the COVID pandemic. The claimant did not work from March 15, 2020, through April 16, 2020. Prior to the furlough the claimant was working 27 hours a week and earned \$15.00 an hour.

The employer received a PPP loan and returned the claimant back to work on April 17, 2020. Claimant resumed working 27 hours a week at \$15.00 an hour.

The claimant continued working his regular schedule until June 17, 2020. On June 19, 2020, the employer notified the claimant that he was laid off due to the decrease in business. The claimant was laid off until April 13, 2021. When claimant returned to work on April 14, 2021, the employer could only offer him nine hours a week. The claimant remains working only one day a week for the employer.

During this time period the claimant has been able to work and available for work.

Claimant is also on the city council and received \$5.00 per city council meeting. Claimant attends one city council meeting per month.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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.

(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.

(b) 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.

(c) 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.

From June 18, 2020 until March 13, 2021, claimant performed no work and received no wages. Claimant was guaranteed part time hours. Since claimant did not receive his guaranteed hours claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has demonstrated he was able to and available for work, and, thus, is entitled to benefits.

Since this is a COVID-related unemployment claim and the claim was filed before June 12, 2021, the employer's account shall not be charged.

DECISION:

The August 4, 2021 (reference 03) unemployment insurance decision is REVERSED. Claimant is not employed at the same hours and wages as agreed upon at the time of hire and, therefore, is totally unemployed from June 18, 2020 through March 13, 2021. Benefits are allowed. The account of the employer, Bob's Custom Trophies, Inc. (account # 371052-000), shall not be charged.

A handwritten signature in black ink that reads "Carly Smith". The signature is fluid and cursive, with the first name "Carly" and last name "Smith" clearly distinguishable.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

November 18, 2021
Decision Dated and Mailed

cs/scn