

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAREL L HARDIMAN
Claimant

APPEAL NO. 15A-UI-04778-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 03/29/15
Claimant: Respondent (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:

The employer filed a timely appeal from the April 15, 2015, reference 01, decision that allowed benefits to the claimant effective March 29, 2015 provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on June 1, 2015. Claimant Garel Hardiman did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Emily Martin represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO), which record indicates that no benefits have been paid to the claimant in connection with the claim. The administrative law judge took official notice of the claimant's weekly claims for benefits for the weeks ending April 4 and 11, 2015 (KCCO).

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since establishing his claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Garel Hardiman established a claim for unemployment insurance benefits that was effective March 29, 2015, but has not received benefits in connection with the claim. The claimant's weekly benefit amount is set at \$220.00. The claimant used the Internet and the Workforce Development website to make weekly claims for the weeks ending April 4 and 11, 2015. Accordingly, those are the only two weeks that the administrative law judge need address.

Workforce Development records indicate that Mr. Hardiman's claim is locked as a result of an unrelated decision that disqualified him benefits. Workforce Development records also indicate that Remedy Intelligent Staffing is not a base period employer for purposes of the claim that Mr. Hardiman established on March 29, 2015.

The claimant began his employment with Remedy and began a long-term, temporary work assignment at General Mills on January 27, 2015. The employer reported to Workforce Development that it had paid \$2,082.00 to the claimant during the first quarter of 2015, which would indicate an average weekly wage of \$231.33 for the quarter (2,082.00 divided by nine weeks). The work hours in the assignment have varied from 24 to 32 hours per week. During the week that ended April 4, 2014, the claimant completed the 25 hours of work that the employer had available for the claimant in the assignment. During the week that ended April 11, 2015, General Mills was on a temporary shutdown and had no work for the claimant. The claimant continues in the assignment.

REASONING AND CONCLUSIONS OF LAW:

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".

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).

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).

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 claimant failed to appear for the hearing or present any evidence. The evidence in the record establishes that the claimant was available for work during the week that ended April 4, 2015, but does not establish that he was partially unemployed from Remedy. Accordingly, the claimant is not eligible for benefits for the week that ended April 4, 2015. The evidence in the record establishes that the claimant was temporarily unemployed during the week that ended April 11, 2015. The claimant would be eligible for benefits for the week that ended April 11, 2015, provided he meets all other eligibility requirements. Because the employer is not a based period employer for purposes of the claim year that started for the claimant on March 29, 2015, the employer will not be charged for any benefits paid to claimant during the period of March 29, 2015 through March 26, 2016.

DECISION:

The April 15, 2015, reference 01, decision is modified as follows. The claimant was available for work during the week that ended April 4, 2015, but was not partially unemployed. The claimant is not eligible for benefits for the week that ended April 4, 2015. The claimant was temporarily unemployed during the week that ended April 11, 2015. The claimant would be eligible for benefits for the week that ended April 11, 2015, provided he meets all other eligibility requirements. The employer is not a based period employer for purposes of the claim year that started for the claimant on March 29, 2015. The employer will not be charged for any benefits paid to claimant during the period of March 29, 2015 through March 26, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs