

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COOPER F HATTEN
Claimant

APPEAL NO. 13A-UI-01901-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LLK INC
Employer

01/06/13
Claimant: Appellant (1-R)

Iowa Code Sections 96.4(3) and 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

Cooper Hatten filed a timely appeal from the February 12, 2013, reference 01, decision that denied benefits effective January 6, 2013 based on an agency conclusion that he was not partially unemployed from L.L.C., Inc. After due notice was issued, a hearing was held on March 14, 2013. Mr. Hatten participated. Dennis Peterson, Human Resources Specialist with Merit Resources, represented the employer. The administrative law judge took official notice of the agency's administrative record (WAGEA) of quarterly wages reported for Mr. Hatten.

ISSUES:

Whether Mr. Hatten has been partially unemployed from L.L.K., Inc., since he established the original claim for benefits that was effective January 6, 2013. He has not been partially unemployed from that employer since he filed his claim.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cooper Hatten was employed by L.L.K., Inc., doing business as The Funnybone Comedy Club, on a part-time basis and last performed work for that employer on September 15, 2012. Mr. Hatten worked for another employer, Boetger Lawnsapes, at the same time he worked for L.L.K., Inc. Prior to working his most recent day with the L.L.K., Inc., in September 2012, Mr. Hatten told L.L.K., Inc., that he had accepted a management position with Boetger Lawnsapes. Mr. Hatten and L.L.K., Inc., came to an agreement that Mr. Hatten would be left on the L.L.K., Inc., employee roster and would get back in touch with L.L.K., Inc., if and when he wished to be scheduled for work with that employer. Mr. Hatten never got back in touch with L.L.K., Inc., to indicate he was available for additional work with that employer.

Mr. Hatten established a claim for unemployment insurance benefits that was effective January 6, 2013. Workforce Development calculated Mr. Hatten's weekly benefit amount at \$229.00. In other words, for any week in which Mr. Hatten is eligible for benefits, that maximum amount he could be considered for would be \$229.00.

REASONING AND CONCLUSIONS OF LAW:

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).

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.]

Mr. Hatten has not been partially unemployed from employer L.L.K, Inc., since he established the claim that was effective January 6, 2013 and is, therefore, not eligible for benefits under a theory of partial unemployment. The evidence suggests that Mr. Hatten voluntarily quit the employment with L.L.K., Inc., but that issue was not before the administrative law judge. The evidence also cast doubt on whether Mr. Hatten has satisfied the work availability requirement since he established his claim for benefits, in light of his failure to contact L.L.K., Inc., for additional work, though he knew they had additional work for him. The employer's account will not be charged for benefits, if any, subsequently paid to the claimant for the period prior to the apparent separation.

This matter will be remanded to the Claims Division for adjudication of the apparent separation from L.L.K., Inc., and its impact on Mr. Hatten's eligibility for benefits and the employer's liability for benefits. At the same time, the Claims Division should provide initial adjudication of the broader issue of whether Mr. Hatten has been available for work within the meaning of the law since he established the claim that was effective January 6, 2013.

DECISION:

The Agency representative's February 12, 2013, reference 01 is affirmed. The claimant has not been partially unemployed from employer L.L.K, Inc., since he established the claim that was effective January 6, 2013 and is, therefore, not eligible for benefits under a theory of partial unemployment. Benefits are denied effective January 6, 2013.

This matter is remanded to the Claims Division for adjudication of the separation from L.L.K., Inc., and for initial adjudication of the broader issue of whether the claimant has been available for work within the meaning of the law since he established the claim that was effective January 6, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css