

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICK M FERGUSON**  
Claimant

**AERO RACE WHEELS INC**  
Employer

**APPEAL 21A-UI-20069-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/13/21  
Claimant: Respondent (4)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Aero Race Wheels Inc., the employer/appellant, filed an appeal from the September 7, 2021, (reference 03) unemployment insurance (UI) decision that allowed benefits as of June 13, 2021. The parties were properly notified of the hearing. A telephone hearing was held on November 1, 2021. The employer participated through Jodi Lemke, vice president administration. Mr. Ferguson did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Ferguson able to and available for work?  
Is Mr. Ferguson temporarily or partially unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Ferguson began working for the employer, a base period employer, on January 5, 2021. He worked as a part-time factory worker. Mr. Ferguson was also work at New Fashion Pork managing hog buildings. New Fashion Pork has not reported any wages for Mr. Ferguson during his base period.

As of April 1, 2021, Mr. Ferguson began working full-time for this employer. He continuously worked for this employer under the same terms and conditions as contemplated when he began full-time work. At some point during the week of June 13-19, 2021, something happened with Mr. Ferguson's other job. Mr. Ferguson filed a claim for benefits based on whatever happened with that job. Mr. Ferguson did not participate in the hearing, and he did not provide any additional information about his other job.

Mr. Ferguson's employment ended with this employer on July 7, 2021. The Iowa Workforce Development representative's decision, dated August 18, 2021, (reference 04), has already

determined that Mr. Ferguson is not eligible for benefits as of July 7, 2021 because he voluntarily quit for personal reasons.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 96.1A, 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 § 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 Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) 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.

Iowa Code section 96.7(2)a(2)(a) 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.

Mr. Ferguson was still employed with this employer from June 13, 2021 through July 6, 2021. The employer continued to offer him the same employment as contemplated when he began working full-time until his job ended on July 7, 2021. Benefits are denied from June 13, 2021 through July 6, 2021.

**DECISION:**

The September 7, 2021, (reference 03) unemployment insurance decision is modified in favor of appellant, the employer. Mr. Ferguson was still employed at the same hours and wage as contemplated when he began full-time work from June 13, 2021 through July 6, 2021. Benefits are denied from June 13, 2021 through July 6, 2021.



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November 22, 2021  
Decision Dated and Mailed

dz/scn