

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYON K YOUNG
Claimant

APPEAL NO. 07A-UI-08643-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENERAL GROWTH MANAGEMENT INC
Employer

**OC: 07/29/07 R: 03
Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Bryon Young, filed an appeal from a decision dated September 6, 2007, reference 01. The decision disqualified him from receiving unemployment benefits as he was not able and available for work. A hearing was scheduled to be held by telephone conference call on September 25, 2007, but prior to the hearing date it was determined to be unnecessary.

ISSUE:

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

FINDINGS OF FACT:

Bryon Young filed a claim for unemployment benefits with an effective date of July 29, 2007. The decision in the current case was issued September 6, 2007, finding him not able and available for work because he was still employed by General Growth Management for the same hours and wages for which he was hired.

A subsequent decision issued by Iowa Workforce Development on September 14, 2007, reference 05, found the claimant was employed by General Growth Management to the same extent as he was during his based period but had been separated from regular full-time employment for which he remained able and available.

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.

The claimant is able and available to the same extent as he was during his base period and is eligible to receive benefits. The account of the employer should not be charged for any benefits paid to the claimant.

DECISION:

The representative's decision of September 6, 2007, reference 01, is modified in favor of the appellant. Bryon Young is eligible for benefits, provided he is otherwise qualified. The account of General Growth Management Inc. shall not be charged with benefits paid to the claimant.

If the claimant's employment status with General Growth Management changes, the employer should notify Iowa Workforce Development immediately of the change.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw