

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFERY M ROWSON
Claimant

ARCH INC
Employer

**APPEAL 19A-UI-08486-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Respondent (4)**

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from the October 17, 2019 (reference 02) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits, provided he was otherwise eligible, and that no charges would be made against employer's account for benefits paid.

The parties were properly notified of the hearing. A telephone hearing was held on November 20, 2019, at 9 a.m. Claimant did not register for the hearing and did not participate. Employer participated through Director Devin Land. Employer's Exhibits 1-4 were admitted.

ISSUE:

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to and available for work?

Is the claimant still employed at 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:

The claimant began employment with the employer on a part-time basis in the spring of 2018. After approximately 90 days he was moved to full-time status, which was understood to mean more than 30 hours per week. He worked as a direct support professional. He typically worked from mid-afternoon to about 10 p.m., several days a week. He also typically worked two 12-hour days on alternating weekends. The other weekends he was unavailable for shifts due to child care responsibilities. Claimant also had another job, and employer made efforts to schedule shifts around claimant's shifts at his other job. Claimant typically worked overnight at his other

job, so that was not difficult to do. Claimant was also unavailable for some Sundays during the fall, to play in a softball league. Claimant is still employed by employer on a full-time basis, regularly being scheduled more than 30 hours per week.

The week of September 22, 2019, claimant worked 17.5 hours. He was absent on Friday, September 27th due to an illness and Saturday, September 28th due to requested time off. Exhibits 1, 2, 4. Had claimant not been off on those dates, he would have worked approximately 39.5 hours.

The week of September 29th, 2019, claimant worked 28.25 hours. He was absent on Sunday, September 29th due to requested time off. Had he not requested time off on those dates, he would have worked approximately 40.25 hours. Exhibits 2, 4. Over the next several weeks, claimant worked over 30 hours per week.

The week of October 27, 2019, claimant worked 26.45 hours. Had he not limited his availability due to his softball league, he would have worked approximately 31.45 hours that week. Claimant has since continued to get 30 hours or more in the ensuing weeks.

Claimant is employed with employer in the same way as before he filed the current claim. He was receiving full-time hours prior to filing the current claim and has continued to be scheduled full-time hours since then. During weeks where claimant did not receive full-time hours, the lack of hours was due to claimant requesting and receiving time off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge MODIFIES the October 17, 2019 (reference 02) unemployment insurance decision in favor of the appellant.

Iowa Code section 96.19(38) 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.

Claimant is not totally, partially, or temporarily unemployed. Claimant is employed with employer in the same way as before he filed the current claim. He was receiving full-time hours prior to filing the current claim and has continued to be scheduled full-time hours since then. During weeks where claimant did not receive full-time hours, the lack of hours was due to claimant

requesting and receiving time off. Because claimant does not meet the legal definition of unemployed, he is not eligible to receive benefits. Furthermore, because claimant is not unemployed, it is unnecessary to reach the issue of whether claimant is able to and available for work.

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.

Because claimant is receiving the same employment from the employer that the individual received during the claimant's base period, any benefits paid to claimant shall not be charged against the account of the employer.

DECISION:

The October 17, 2019 (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant is not eligible to receive unemployment insurance benefits beginning September 22, 2019, as he is not totally, partially, or permanently unemployed as to this employer. Any benefits paid to claimant shall not be charged against the account of the employer.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn