

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN R JONES

Claimant

APPEAL 18R-UI-11748-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHON O CONNELLY

Employer

OC: 10/07/18

Claimant: Respondent (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the October 30, 2018, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2018. Claimant participated and testified. Employer participated through Office Manager/Dispatcher Melanie Connelly.

ISSUES:

Is the claimant partially unemployed and available for work?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 15, 2018. When claimant was first hired, it was as a substitute driver, on an as-needed basis. On July 23, 2018, claimant was hired on as a regular full-time driver. Claimant last worked for the employer on August 31, 2018, when he was moved out of his regular full-time driver position and moved back to a substitute driver position. The move was initially made on a temporary basis because the employer learned from its insurance company that it may not be able to insure claimant. On September 7, 2018, the employer learned that claimant could not be insured as a regular full-time driver and the move to substitute driver became permanent. There has not been any work available for claimant since moving to the part-time driver position. Claimant filed his claim for benefits for the week beginning October 7, 2018. Claimant did not have any restrictions on his ability to or availability for work beginning October 7, 2018. Claimant completed his required weekly job searches and began a new full-time position on October 20, 2018. Claimant is still employed in that position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed from October 7 through October 20, 2018 and is employed beginning October 21, 2018.

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 Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) 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.

Claimant has not worked for this employer since August 31, 2018. Claimant did not work or earn any wages until he was hired by a new employer on October 20, 2018. Therefore, claimant was not partially unemployed, but was totally unemployed from his original claim date of October 7, 2018 through the week ending October 20, 2018. Claimant began full-time employment on October 20, 2018 and is therefore no longer unemployed effective October 21, 2018. Accordingly, benefits are allowed from October 7, 2018 through the week ending October 20, 2018, but are withheld beginning October 21, 2018. The employer in this case is not a base-period employer making the issue of chargeability moot at this time.

DECISION:

The October 30, 2018, (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant was totally unemployed from October 7, 2018 through October 20, 2018 and benefits are allowed for this time period, provided he is otherwise eligible. The claimant is no longer unemployed and benefits are therefore withheld effective October 21, 2018.

REMAND:

The issue of claimant's separation from this employer is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs