

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDRES SILVA PALLARES
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 18A-UI-02567-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/14/18
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 8, 2018, (reference 03) unemployment insurance decision that denied benefits effective January 21, 2018, based on claimant's continued employment. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2018. Claimant participated personally and through Interpreter 6869 with CTS Language Link. Employer participated through human resources director Nicolas Aguirre. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision finding claimant ineligible for benefits was mailed to the claimant's last known address of record on February 8, 2018. Claimant received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 18, 2018. Claimant completed the appeal and turned it in to his local office on February 16, 2018. The local office did not date stamp the appeal, and the Appeals Bureau did not receive the appeal until February 26, 2018.

Claimant began working for employer on October 27, 2008. Claimant last worked as a full-time general laborer. Claimant was put on an unpaid suspension from January 17, 2018, through January 25, 2018.

Claimant worked 20 hours during the one week ending January 27, 2018, due to the disciplinary suspension.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

In this case, claimant did return his appeal to Iowa Workforce Development prior to the deadline to file the appeal. Therefore, it shall be accepted as timely.

The next issue is whether claimant was partially unemployed during the one week ending January 27, 2018, and eligible for benefits.

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 96.19(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.

(b) 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.

(c) 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.

Because claimant was not currently employed under the same hours and wages as contemplated at hire during the one week ending January 27, 2018, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

DECISION:

The February 8, 2018, (reference 03) unemployment insurance decision is reversed. The appeal is timely. The claimant was partially unemployed during the one week ending January 27, 2018, and benefits are allowed, provided he is otherwise eligible. He is required to report gross wages earned for each week of benefits claimed. The employer's account (275457) may be liable for charges, if claimant is otherwise qualified to receive benefits during the week in question.

Christine A. Louis
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Decision Dated and Mailed

cal/scn