

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN P JOHNSTON**  
Claimant

**APPEAL NO. 11A-UI-13246-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 09/04/11  
Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38)(b) – Partial Unemployment  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

John Johnston filed a timely appeal from the September 28, 2011, reference 01, decision that denied benefits effective September 4, 2011, based on an Agency conclusion that he was not partially unemployed from Prairie Meadows Racetrack & Casino. After due notice was issued, a hearing was held on October 31, 2011. Mr. Johnston participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUES:**

Whether Mr. Johnston has been partially unemployed since he established a new “original claim” for benefits that was effective September 4, 2011.

Whether Mr. Johnston had been able to work and available for full-time employment since he established a new “original claim” for benefits that was effective September 4, 2011.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: John Johnston was last employed on full-time basis with J & J Delivery, Inc. That employment ended in August 2009, when Mr. Johnston was laid off. Mr. Johnston held a management position with J & J Delivery and has since looked for another full-time management position. Mr. Johnston established a claim for benefits that was effective September 6, 2009 and received both regular state benefits and extended federal benefits. When that claim year expired, Mr. Johnston established a new “original claim” that was effective September 5, 2010. Mr. Johnston received both regular state benefits and extended federal benefits under that claim as well. Mr. Johnston’s weekly benefit amount in connection with the September 5, 2010 claim was \$376.00 that amount was based on wages Mr. Johnston had received from the full-time

employment at J & J Delivery during the second and third quarters of 2009, the last quarters of his employment with that company.

Mr. Johnston continues to seek, but has not yet secured new full-time employment. In April 2010, Mr. Johnston accepted a part-time position with Prairie Meadows Racetrack & Casino. Mr. Johnston hoped the part-time employment would transition into a full-time management position. It has not thus far. Since he began with Prairie Meadows, Mr. Johnston has generally worked two or three shifts per week. Mr. Johnston generally works 4:00 p.m. to 10:00 p.m. on Mondays and Wednesday, but sometimes works those hours also on Friday. Mr. Johnston also usually works from 7:00 to 11:00 a.m. on Tuesdays. Mr. Johnston makes \$12.08 per hour before 6:00 p.m., but makes \$12.43 after that. Mr. Johnston has consistently reported his weekly wages from the part-time Prairie Meadows employment to Workforce Development. There has been no change in the conditions of the Prairie Meadows employment since it started. The wages from Prairie Meadows are substantially less than the \$55,000.00 salary Mr. Johnston received at J & J Delivery.

Under the claim year that was effective September 5, 2010, Mr. Johnston's weekly benefit amount was set at \$376.00. Prior to the expiration of that claim year, the Prairie Meadows wages reduced, but did not eliminate, Mr. Johnston's eligibility for unemployment insurance benefits. With the new claim that was effective September 4, 2011, Mr. Johnston's weekly benefit amount is set at \$139.00. This amount is based solely on wages Mr. Johnston received from Prairie Meadows during the relevant base period, which consisted of the second, third, and fourth quarter of 2010 and first quarter of 2011. Prairie Meadows is the only base period employer for purposes of the new "original claim" that was effective September 4, 2011. Since the new claim year started, Mr. Johnston has consistently reported weekly wages from Prairie Meadows that exceed his \$139.00 weekly benefit amount by more than \$15.00.

#### **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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code section 96.19(38)(b).

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.

871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

[Emphasis added.]

The evidence in the record establishes that Mr. Johnston has not been partially unemployed from Prairie Meadows since he established the new "original claim" for benefits that was effective September 4, 2011. There has been no reduction in hours or wage. In addition, the weekly wages have consistently exceeded Mr. Johnston's weekly benefit amount by more than \$15.00. Prairie Meadows' account will not be charged for benefits so long as the current conditions continue.

The evidence indicates that Mr. Johnston's work history consisted of full-time employment until August 2009, when he was laid off from J & J Delivery. Mr. Johnston has continued to be both able and available for *full-time* work since he established the new "original claim" for benefits that was effective September 4, 2011. Though Mr. Johnston does not meet the definition of being partially unemployed, he has satisfied the work ability and availability requirements since he established the new original claim for benefits that was effective September 4, 2011. However, because Mr. Johnston's weekly wages have consistently exceeded his \$139.00 weekly benefit amount by more than \$15.00, this reduces his weekly benefit eligibility to zero.

As a cautionary note, the administrative law judge would note that a voluntary quit without good cause attributable to the employer from the part-time Prairie Meadows employment would disqualify Mr. Johnston for unemployment insurance benefits until he earns ten times his weekly benefit amount from subsequent employment. This is so because Prairie Meadows was the sole base period employer for purposes of the claim year that started September 4, 2011.

**DECISION:**

The Agency representative's September 28, 2011, reference 01, is modified as follows. The claimant has not been partially unemployed since establishing the new original claim for benefits that was effective September 4, 2011 and is not eligible for benefits under a theory of partial unemployment. Prairie Meadows will not be charged for benefits paid to the claimant while the present employment continues under the same conditions. The employer should notify Workforce Development in the event the claimant separates from the employment so that the effect of the separation on the claimant's eligibility for benefits and the employer liability for benefits may be adjudicated. The claimant has continued to be able to perform full-time employment and has continued to be available for full-time employment. Thus the claimant would be eligible for benefits under Iowa Code section 96.4(3) able and available provisions, effective September 4, 2011, provided he meets all other eligibility requirements. Weekly wages more than \$15.00 over the \$139.00 weekly benefit amount will reduce the claimant's eligibility for benefits to zero.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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