

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMPSON, VERNELL, C
Claimant

APPEAL NO. 11A-EUCU-00098-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPHALT SURFACING
Employer

OC: 11/15/09
Claimant: Respondent (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 21, 2011, reference 03, decision that allowed benefits effective October 24, 2010 based on an agency conclusion that the claimant was able and available for work but partially unemployed from the above employer. After due notice was issued, a hearing was held on February 21, 2011. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Sheri Severtson represented the employer. The administrative law judge took official notice of the Agency's administrative record of wages reported by or for the claimant and any benefits disbursed to the claimant. Exhibits One and Two were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his additional claim for benefits.

Whether the claimant was partially unemployed from the above employer.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vernell Thompson established an additional claim for unemployment insurance benefits that was effective October 24, 2010, in response to a temporary reduction in work hours from his employment with Asphalt Surfacing. Mr. Thompson ordinarily worked for the employer as a full-time driver. During the week that ended October 30, 2010, Mr. Thompson's full-time work hours were reduced to 33 hours. For that week, Mr. Thompson's gross wages were \$444.78. Mr. Thompson attempted to claim unemployment insurance benefits only for that week and then discontinued his claim. Mr. Thompson's weekly benefit amount been set at \$374.00. Mr. Thompson did not receive any benefits for the week ending October 30, 2010 or otherwise

in connection with the additional claim for benefits. During the next week, Mr. Thompson's work hours returned to full time.

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.]

Mr. Thompson claimed benefits for only the week ending October 30, 2010. Even though Mr. Thompson's work hours were reduced from full-time to 33 hours for that week, Mr. Thompson cannot be considered partially unemployed for that week because his gross earnings for the week exceeded his weekly benefit amount plus \$15.00. Mr. Thompson was not eligible for benefits for the week that ended October 30, 2010. Mr. Thompson returned to full-time work the next week and had greater earnings. Thus, Mr. Thompson was still not partially unemployed. Benefits are denied October 24, 2010. The evidence indicates that Mr. Thompson did meet the legal definition of "available" for work during the week that ended October 24, 2010, when he was working only part-time hours, but did not meet the definition during the period of October 25, 2010 through November 13, 2010, because he was working to such an extent that he was essentially removed from the labor market. Because there have been no benefits disbursed in connection with the additional claim for benefits, there is not much need to address employer liability. Nonetheless, the employer's account will not be charged for benefits for the period of October 24, 2010 through November 13, 2010.

DECISION:

The Agency representative's January 21, 2011, reference 03, is reversed. The claimant was not partially unemployed for the period of October 24, 2010 through November 13, 2010. The claimant met the legal definition of available for work for the week ending October 24, 2010, but not for the subsequent two weeks. The claimant was not eligible for benefits for the period of October 24, 2010 through November 13, 2010. The employer will not be charged for benefits in connection with those three weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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