

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS A SECOR
Claimant

APPEAL NO: 11A-UI-03901-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSER CONSTRUCTION INC
Employer

OC: 02/13/11
Claimant: Respondent (4)

Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Employer Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 24, 2011, reference 02, that held the claimant was eligible for benefits effective February 13, 2011, and the employer was denied a relief of charges. A hearing was held on April 26, 2011. The claimant did not participate. Mark Kinser, President, participated for the employer.

ISSUES:

The issue is whether the claimant is able and available for work.

The further issue is whether the employer should be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant has worked a part-time cleaning job for the employer for more than five years while working various full-time jobs for other employers. When claimant filed a benefit claim effective February 14, 2010, the employer protest was he still worked the same part-time job. The department issued a decision on March 10, 2010 that allowed claimant benefits, and relieved the employer from benefit charges.

The claimant has continued to work the same part-time job for the employer up to filing a second benefit year claim effective February 13, 2011. Claimant remains a part-time employee. Claimant failed to appear for the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

The administrative law judge concludes that the claimant is able and available for work for the employer on the same part-time basis, and no disqualification is imposed.

The claimant has continued to work the same part-time schedule for his employer to the present and he is eligible to receive benefits in any week for partial unemployment benefits.

Iowa Code § 96.7-2-a(2) 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.

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.

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.

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.

The administrative law judge further concludes that the employer is entitled to a relief of benefit charges pursuant to the law section cited above.

DECISION:

The department decision dated March 24, 2011, reference 02, is modified in favor of the employer. The claimant is able and available for work, and eligible for partial benefits effective February 13, 2011. The employer is granted a relief from said charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs