

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN B TREVINO
Claimant

J K RIVER BOTTOM INC
Employer

APPEAL 17A-UI-03232-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/17
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the March 15, 2017, (reference 02) unemployment insurance decision that allowed benefits beginning February 26, 2017. The parties were properly notified about the hearing. A telephone hearing was held on April 17, 2017. Claimant did not participate. Employer participated through office manager Gerald Keeler. Employer exhibit one was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's wage history and benefit payment history, with no objection.

ISSUES:

Is the claimant able to work and available for work effective February 26, 2017?

Is the claimant eligible to receive partial benefits?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired to work full-time on October 26, 2015 as a laborer. On occasion, the weather may affect claimant's hours, but normally the work is inside and unaffected by the weather. Claimant filed a claim for benefits with an effective date of February 26, 2017. As of February 26, 2017, the employer had a minimum of forty hours per week of work available for claimant. Employer Exhibit One. Mr. Keeler testified that if claimant did not work forty hours in a week, it was because he choose not to work, but that the employer had at least forty hours of work available for claimant.

The employer always offers claimant at least forty hours of work per week. The employer did not reduce claimant's hours or place him on a layoff. If the employer does reduce an employee's hours, the employer completely reduces the employee's hours and places the employee on a seasonal layoff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed effective February 26, 2017.

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".

Iowa Code § 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 § 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.

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.

The employer offers claimant forty hours of work per week. Any limitation of hours worked was triggered by claimant's inability to work or unavailability for the available hours. Thus since the employer continues to provide regular hours and he is currently employed under the same hours as contemplated at hire, he is not considered partially unemployed. Benefits are denied.

DECISION:

The March 15, 2017, (reference 02) unemployment insurance decision is reversed. Claimant is not partially unemployed and benefits are denied.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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