

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAZZMAND J MARTIN
Claimant

APPEAL NO. 15A-UI-08114-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

**OC: 12/21/14
Claimant: Respondent (1)**

Iowa Admin. Code r. 871-24.23(26) — Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 6, 2015, reference 04, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 21, 2015. Claimant participated personally. Employer participated by Kerry Hale. Employer's Exhibits One through Four were admitted into evidence

ISSUES:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

FINDINGS OF FACT:

The claimant currently works for Winegard Company, a base period employer, full time under the same terms and conditions as contemplated in the original contract of hire. From time to time employer will set non scheduled days wherein employees do not work because of a lack of orders. Claimant is also in receipt of intermittent FMLA.

The issue before the administrative law judge is that claimant would request FMLA days for the care of her child. On June 15, 16, 22, and 19 of 2015 claimant received FMLA days off. FMLA days off are not covered by unemployment benefits. Subsequent to claimant's requesting days off, it came to the attention of claimant that those days turned into non scheduled days where she would not have worked anyway. As a result claimant is asking for partial unemployment benefits for the layoffs on those days.

Employer stated that they did not have the specific information as to whether the FMLA days claimant requested became non scheduled days off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

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, 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.

An individual shall be deemed partially unemployed in any week in which 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 § 96.4(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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Claimant has properly filed her FMLA days. Employer testified that non scheduled days should take precedence over FMLA days and claimant should be eligible for partial unemployment

benefits for those days that become non scheduled days off. The administrative law judge received testimony from claimant that was uncontroverted by employer that June 15, 16, 22, and 19 of 2015 became non scheduled days off. Benefits are allowed. Employer's account shall be charged as claimant is a full-time employee.

DECISION:

The July 6, 2015, reference 04, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. The account of the current employer shall be charged.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css