

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD D PETER**  
Claimant

**APPEAL NO. 09A-UI-02785-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STALLS FARM & HOME DISTRIBUTING INC**  
Employer

**OC: 01-04-09**  
**Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 9, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2009. The claimant did participate. The employer did participate through Scott Roehler, Manager.

**ISSUE:**

Was the claimant still employed at the same hours and wages between January 4, 2009 and February 21, 2009?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer sales representative full time beginning September 1, 2008 through February 21, 2009.

The claimant's hours were reduced as a disciplinary response to his continued use of chewing tobacco on the job. The employer never told the claimant that his hours were being reduced for chewing tobacco on the job. The claimant was hired to work 40 hours per week. At the beginning of December his hours were reduced to two or three days per week or 16 to 24 hours per week. On January 1 the claimant's hours were reduced to one or two days per week or 8 to 16 hours per week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the period ending February 21, 2009.

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, 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 § 96.7-2-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.

Because the claimant was employed less than his regular full-time hours, he was considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

**DECISION:**

The February 9, 2009, reference 01, decision is affirmed. The claimant was partially unemployed through February 21, 2009 and benefits are allowed, provided he is otherwise eligible. The account of employer (account number 046835), may be liable for charges.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs