

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M MILLER
Claimant

WORKSOURCE INC
Employer

APPEAL NO: 14O-UI-00618-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/21/13
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 1, 2013, reference 03, that held claimant was still employed part-time or on-call whenever work was available as of October 6, 2013, and benefits are allowed. The employer appealed. An Administrative law judge (ALJ) issued a decision December 4, 2013 that claimant appealed. The Employment Appeal Board (EAB) remanded this matter for a new hearing.

A telephone hearing was held on February 11, 2014. The claimant did not participate. Kassandra Pickett, Recruiter, participated for the employer.

ISSUES:

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

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began working for the employer in April 2013, as an on-call whenever work assignments are available employee. The department record shows employer reported wages for claimant in the amount of \$896 for third quarter and \$1,944 for fourth quarter 2013.

Claimant last worked a temporary assignment for the employer at Packaging Distribution Services on September 20, 2013. The employer client ended the work assignment and the employer did not have further work to offer claimant at that time. The employer did terminate claimant's employment. The employer made a statement during the ALJ hearing it was not protesting claimant benefits at that time (13A-UI-12589-NT – Findings of Fact).

The employer talked with claimant about further work assignments in late October and thereafter, but it learned claimant was going to school and had class conflicts. The employer did not notify the department it was protesting claimant's claim based on these job refusals until January 2014.

The employer later protested claimant's claim for refusing work on January 13, 2014. The department issued a January 14, 2014 decision reference 04 that the work offered was not suitable and no benefit disqualification is imposed. Claimant has been claiming and receiving benefits from the week ending October 12, 2013 thru February 8, 2014.

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".

Iowa Code section 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 concludes that claimant does meet the availability requirements of the law for benefits effective October 6, 2013.

The employer protest is based on work availability not employment separation. There is no availability issue that would disqualify claimant as of October 6, and the employer admitted in this in the prior ALJ hearing.

Although the employer later had some issues with offering claimant further work, it did not protest it to the department until January 2014.

The administrative law judge further concludes the employer is granted a relief of benefit charges as it was offering claimant the same on-call part-time work as of October 2013 as he had performed during his base period.

DECISION:

The department decision dated November 1, 2013, reference 03, is modified. The claimant is eligible for benefits effective October 6, 2013, and the employer is granted a relief from benefit charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs