

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C RASSO
Claimant

APPEAL NO. 14A-UI-12646-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 11/02/14
Claimant: Appellant (1R)

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated December 5, 2014, reference 01, which denied partial unemployment insurance benefits as of November 2, 2014, finding that the claimant was still employed in his job with United Parcel Service at the same hours and wages as in the original agreement of hire and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on January 6, 2015. The claimant participated. The employer participated by Mr. Simon Nelson.

ISSUE:

The issue in this matter is whether the claimant is still employed part time at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all the evidence in the record, finds: The claimant began his employment with United Parcel Service on June 29, 2005 and continues to be employed by this employer at the time of hearing. Mr. Rasso was hired as a part-time inside worker working three and one-half hours per day, five days per week at the rate of \$9.00 per hour. Mr. Rasso continues to be employed by United Parcel Service on a part-time basis working three and one-half hours per day, five days per week at the same or greater rate of pay per hour at the time of hearing.

Mr. Rasso filed his appeal in this matter, not because he believed the decision with respect to United Parcel Service to be incorrect, but because he had previously been held eligible to receive partial unemployment insurance benefits while employed by United Parcel Service based upon his previous full-time employment with Palmer College. Mr. Rasso was sent a letter by Iowa Workforce Development informing him that he could apply for extended benefits and, although the claimant did so, any partial unemployment insurance benefits that were available to him from his previous employment with Palmer College were not addressed and only the claimant's part-time employment with United Parcel Service was considered by the Agency.

REASONING AND CONCLUSIONS OF LAW:

The question in this appeal is whether the evidence in the record establishes that Mr. Rasso is still employed in a part-time job at the same hours and wages as contemplated in the original agreement of hire. It does.

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 § 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. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The evidence in the record clearly establishes that Mr. Rasso continues to be employed part time at the same number of hours at the same rate of pay or greater than agreed upon when he was hired by United Parcel Service. Because nothing has changed in the original agreement of hire, the claimant cannot be considered to be partially unemployed with respect to his employment with United Parcel Service and is ineligible to receive partial unemployment insurance benefits based upon his employment with United Parcel Service and United Parcel Service is not chargeable for partial benefits paid to the claimant. The representative's decision denying partial unemployment insurance based upon the claimant's employment with United Parcel Service is therefore correct.

The issue of whether Mr. Rasso is eligible to receive partial unemployment insurance benefits or extended benefits based upon his previous full-time employment with Palmer College is

remanded to the Claims Division for investigation and the issuance of an appealable determination.

DECISION:

The representative's decision dated December 5, 2014, reference 01, is affirmed. The claimant is not eligible to receive partial unemployment benefits based upon his employment with United Parcel Service as the claimant continues to be employed at the same hours and pay as agreed upon at the time of hire. The issue of whether the claimant is eligible to receive unemployment insurance benefits or extended benefits based upon his previous full-time employment with Palmer College is remanded to the Unemployment Insurance Division for investigation and determination of an appealable decision on that issue.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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