

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVERN R CROSS

Claimant

APPEAL NO. 15A-UI-04142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CANDACE E FJETLAND

HAWKEYE WEST PEST CONTROL LLC

Employer

OC: 03/01/15

Claimant: Respondent (5)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 26, 2012, reference 01, decision that allowed benefits to the claimant effective March 1, 2015 provided he was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was able and available for work, but partially unemployed. After due notice was issued, a hearing was held on May 14, 2015. Claimant Lavern Cross participated. Candace Fjetland represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO and WAGE-A).

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since establishing his claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laverne Cross began his employment with Hawkeye West Pest Control, L.L.C., in March 2014 and continues in the employment. Mr. Cross is a part-time service technician. Mr. Cross' initial wage was \$12.00 per hour. Effective January 1, 2015, the employer increased the wage to \$12.50 per hour. The employer is Mr. Cross' sole base period employer and has reported wages for Mr. Cross as follows:

<u>Quarter</u>	<u>Wages Reported</u>	<u>Ave. Weekly Wages</u>	<u>Ave. Weekly Hours</u>
1/2014	325.00	n/a	
2/2014	3,869.00	297.62	24.8
3/2014	4,561.00	350.85	29.2
4/2014	3,721.00	286.23	23.9
1/2015	2,229.00	171.46	14.3

Mr. Cross established a claim for unemployment insurance benefits that was effective March 1, 2015. Workforce Development calculated Mr. Cross' weekly benefit amount at \$198.00. Mr. Cross established the claim in response to the a reduction in the number of work hours the employer had available for him in the first quarter of 2015 and his concern that his scheduled hours in February and March 2015 were being cut on short notice. The employer had reduced the number of hours the employer had available for Mr. Cross in response to a seasonal slowdown in the employer's pest control business. Since Mr. Cross established his claim for benefits, he has worked the hours the employer had available for him. He has not declined any work and has not requested any time off. Since Mr. Cross filed his claim, his weekly wages, weekly hours, and weekly unemployment insurance benefits have been as follows:

<u>Benefit week end date</u>	<u>Wages</u>	<u># of hours</u>	<u>Benefits Paid</u>
03/07/15	81.00	6.5	166.00
03/14/15	313.00	25	0.00
03/21/15	181.00	14.5	66.00
03/28/15	319.00	25.5	0.00
04/04/15	163.00	13	84.00
04/11/15	288.00	23	0.00
04/18/15	225.00	18	0.00
04/25/15	344.00	27.5	0.00
05/02/15	288.00	23	0.00
05/09/15	344.00	27.5	0.00

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 § 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".

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. Iowa Code section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.
 - a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

 - (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.

[Emphasis added.]

The evidence in the record establishes that Mr. Cross had been able to work and available for work since he filed his claim for benefits. The evidence indicates that Mr. Cross was partially unemployed during the weeks that ended March 7, March 21, and April 4, 2015. During those weeks, the number of hours of work the employer had available for Mr. Cross were reduced and Mr. Cross' weekly wages did not exceed his weekly benefit amount by more than \$15.00. Mr. Cross is eligible for benefits for those weeks provided he is otherwise eligible. The employer's account may be charged for those benefits. Mr. Cross had not otherwise been partially unemployed since he filed his claim. This is because during the additional weeks of the claim his hours either have not been reduced or his weekly wages have exceeded his weekly benefit amount by more than \$15.00. Going forward, Mr. Cross would be deemed partially unemployed during any week in which the employer only has reduced hours available and Mr. Cross' weekly wages do not exceed his weekly benefit amount by more than \$15.00.

DECISION:

The March 26, 2012, reference 01, decision is modified as follows. The claimant has been able to work and available for work since he filed his claim for benefits. The claimant was partially unemployed during the weeks that ended March 7, March 21, and April 4, 2015. The claimant is eligible for benefits for those weeks provided he is otherwise eligible. The employer's account may be charged for those benefits. The claimant had not otherwise been partially unemployed

since he filed his claim. Going forward, the claimant would be deemed partially unemployed during any week in which the employer only has reduced hours available and the claimant weekly wages do not exceed his weekly benefit amount by more than \$15.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css