

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL W NOLTING**  
Claimant

**APPEAL NO. 14A-UI-03916-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES USA**  
Employer

**OC: 03/09/14**  
**Claimant: Respondent (4)**

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 April 4, 2013, reference 01, decision that allowed benefits to the claimant effective March 9, 2014, provided he was otherwise eligible, based on an agency conclusion that the claimant was able to work and available for work. After due notice was issued, a hearing was held on May 1, 2014. Claimant Michael Nolting did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Tom Kuiper of Equifax represented the employer and presented testimony through Casey Voelker. Exhibits One, Two, Five and Seven were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of March 9-22, 2014.

Whether the claimant was partially unemployed from his employment during the period of March 9-22, 2014.

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

Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Nolting established a claim for unemployment insurance benefits that was effective March 9, 2014 and received \$496.00 in benefits for the two-week period of March 9-22, 2014. The weekly benefit amount was set at \$248.00. Mr. Nolting then discontinued his claim. Mr. Nolting did not report any wages for the two-week period in question. According to Workforce

Development records, Mr. Nolting's hourly wage was approximately \$11.00. Securitas was Mr. Nolting's sole base period employer.

In February 2014, Mr. Nolting returned to his employment with Securitas Security Services USA without restrictions after an approved medical leave of absence. Before the leave of absence, Mr. Nolting's employment with Securitas had been full-time. The employer did not provide Mr. Nolting with full-time employment when he returned from the leave. During the two-week period of Thursday, March 13, 2014 through Thursday, March 27, 2014, the employer only had 47 total hours of work for Mr. Nolting. Mr. Nolting worked all of the hours that the employer had available for him during the period of March 9-22, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

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".

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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 weight of the evidence indicates that Mr. Nolting was indeed able and available for work, but partially unemployed during the two-week period of March 9-22, 2014, when his claim was active. Mr. Nolting was eligible for benefits he received for the period of March 9-22, 2014, provided he was otherwise eligible. The employer's account may be charged for the benefits paid to Mr. Nolting for that two-week period.

**DECISION:**

The claims deputy's April 4, 2013, reference 01, decision is modified as follows. The claimant was able and available for work, but partially unemployed during the two-week period of March 9-22, 2014, when his claim was active. Mr. Nolting was eligible for benefits he received for the period of March 9-22, 2014, provided he was otherwise eligible. The employer's account may be charged for the benefits paid to Mr. Nolting for that two-week period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs