

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON J ROBINSON
Claimant

APPEAL NO. 14A-UI-00231-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST JANITORIAL SERVICE INC
Employer

OC: 12/08/13
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 January 3, 2014, reference 01, decision that allowed benefits effective December 8, 2013 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 January 30, 2014. Claimant Brandon Robinson participated. Stan Sunleaf represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits paid to the claimant.

ISSUES:

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

Whether the claimant has been partially unemployed from his employment since he established 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: Brandon Robinson started his employment with Midwest Janitorial Service, Inc., in May 2013 and continues in that employment. Mr. Robinson was hired to work on the employer's floor crew. The floor crew strips and waxes floors for the employer's business clients. Mr. Robinson's wage at the time of hire was \$11.00 per hour. A couple months into the employment, the employer notified Mr. Robinson that he would only be paid his \$11.00 wage when he was at a job site and that he would otherwise be paid only minimum wage, \$7.25 per hour. This was a change in the conditions of Mr. Robinson's employment. Mr. Robinson would need to start his workday at the employer's shop, collect necessary equipment, and then travel to the job site. Mr. Robinson's supervisor has been Stan Sunleaf, Branch Manager. Mr. Robinson worked full-time hours from

the start of the employment, but began to experience a decrease in work hours after the summer months.

Mr. Robinson established a claim for unemployment insurance benefits that was effective December 8, 2013. Workforce Development established Mr. Robinson's weekly benefit amount at \$135.00. Mr. Robinson established the claim in response to a further decrease in the number of work hours the employer had available for him. Since Mr. Robinson established his claim for benefits he has remained available for full-time hours with the employer and has not declined any work from the employer. The employer is a base period employer. The employer reported to Workforce Development that it had paid Mr. Robinson's wages totaling \$4,071.00 for the third quarter of 2013. The employer reported to Workforce Development that it had paid Mr. Robinson \$3,190.00 for the fourth quarter of 2013. The amounts reflect nearly a one-quarter reduction in Mr. Robinson's wages from the employment. Since Mr. Robinson established his claim for benefits, he has reported wages, and received unemployment insurance benefits as follows:

<u>Benefit week ending date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
12/14/13	135.00	33.00
12/21/13	160.00	.00
SPECIAL	118.00	118.00
12/28/13	65.00	103.00
01/04/14	260.00	.00
01/11/14	68.00	100.00
01/18/14	60.00	108.00
01/25/14	380.00	.00
02/01/14	340.00	.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 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 establishes that Mr. Robinson had been able to work and available for work each week since he established his claim for benefits. The evidence further establishes a number of weeks during which Mr. Robinson was partially unemployed from Midwest Janitorial Service. Those weeks, so far, have been the weeks ending December 14, December 21, and December 28, 2013 and the weeks ending January 11 and January 18, 2013. During each of those weeks, the employer had reduced hours available to Mr. Robinson and Mr. Robinson's wages did not exceed his weekly benefit amount plus \$15.00. Mr. Robinson is eligible for benefits he received for those weeks provided he is otherwise eligible. Mr. Robinson was not partially unemployed during the weeks that ended January 4, January 25, and February 1, 2014. During those weeks, Mr. Robinson's weekly wages exceeded his weekly benefit amount plus \$15.00. The employer's account may be charged for benefits paid to Mr. Robinson for the weeks of partial unemployment.

DECISION:

The Agency representative's January 3, 2014, reference 01, is modified as follows. The claimant has been able and available for work since establishing his claim for benefits. The claimant was partially unemployed from Midwest Janitorial Service during the weeks ending December 14, December 21, and December 28, 2013 and the weeks ending January 11 and January 18, 2013. The claimant is eligible for benefits for those weeks, provided he is otherwise eligible. The claimant was not partially unemployed during the weeks that ended January 4,

January 25, and February 1, 2014 and is not eligible for benefits for those weeks. The employer's account may be charged for benefits paid to the claimant for the weeks of partial unemployment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css