

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ARNOLD L SCHARES
Claimant

APPEAL 23A-UI-03973-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE COMPANY
Employer

**OC: 04/24/22
Claimant: Respondent (4)**

Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer, John Deere Company, filed an appeal from the April 6, 2023 (reference 02) unemployment insurance decision that allowed benefits effective February 26, 2023. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2023, at 11:00 a.m. The claimant participated. The employer participated through Human Resources Representative Janice Gordon. No exhibits were admitted. Official notice was taken of the administrative record. Both parties waived notice to Iowa Code §§ 96.4(3), 96.7(2)a(2), 96.1A(37), and Iowa Admin. Code r. 871-24.23(26).¹

ISSUES:

Was the claimant permanently separated from employment?
Whether claimant is totally, partially or temporarily unemployed?
Whether claimant is able to and available for work?
Whether claimant is still employed at the same hours and wages?
Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer as a full-time assembler on March 16, 1998. The claimant's regular full-time schedule is 40 hours per week. The claimant's hourly wage is \$24.89 per hour. His weekly benefit amount is \$531.00.

¹ Separation and overpayment codes were listed on the hearing notice in error. The claimant did not permanently separate from employment.

On February 26, 2023, the employer announced a layoff for the week beginning February 27, 2023, and ending March 4, 2023. The employer subsequently revised this layoff period, such that the claimant worked on February 28, 2023 and March 1, 2023. The employer also gave him layoff pay. As a result, the claimant earned \$1,058.60 gross for the week ending March 4, 2023.

The employer laid off the claimant for the following week ending March 11, 2023. The claimant did not earn any wages during this period. The claimant would have been able and available for work had it been provided on the layoff days.

The employer laid off the claimant for the following week ending March 18, 2023. The claimant did not earn any wages during this period. The claimant would have been able and available for work had it been provided on the layoff days.

The claimant returned to full-time work beginning on March 20, 2023. The employer is the only employer in the claimant's base period.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter the administrative law judge finds the issue of permanent separation to be on the hearing notice in error. The administrative law judge concludes the claimant was not partially unemployed for the week ending March 4, 2023. He was also not able and available because he did not work a majority of the workweek. Benefits are denied for this week. He further finds the claimant was totally unemployed and able and available for the weeks ending March 11, 2023 and March 18, 2023. Benefits are granted for these weeks. The claimant is entitled to the benefits he received, so the overpayment issue need not be analyzed.

Iowa Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed "temporarily unemployed" if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Admin. R. 871-24.23(26) and (29) 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

(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.

(b) 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.

(c) 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.

To be partially unemployed for any given week, claimant must work less than 40 hours per week (claimant's regular full-time schedule) and earn less than \$546.00 (claimant's weekly benefit plus \$15).

For the week ending March 4, 2023, the claimant exceeded this threshold by earning \$983.43. As a result, the claimant is not entitled to benefits this week. The claimant was also not able and available for this week because he did not work a majority of the workweek. See Iowa Admin. R. 871-24.23(29).

For the week ending March 11, 2023, the claimant was totally unemployed. The claimant was also able and available for work had work been provided by the employer that week. Benefits are granted for the week ending March 11, 2023.

For the week ending March 18, 2023, the claimant was totally unemployed. The claimant was also able and available for work had work been provided by the employer that week. Benefits are granted for the week ending March 18, 2023.

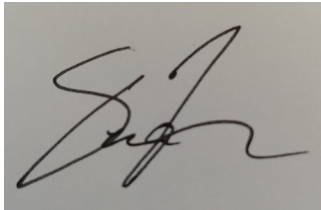
The employer is subject to charge for benefits granted because it is the only employer in the claimant's base period.

DECISION:

The April 6, 2023 (reference 02) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant never permanently separated from John Deere.

Benefits are denied for the week ending March 4, 2023 because the claimant's earnings exceeded his weekly benefit amount of \$531.00 plus \$15.00 or \$546.00 for that week. The claimant was also not able and available for that week because he did not work the majority of the week.

Benefits are granted for the weeks ending March 11, 2023 and March 18, 2023 because the claimant was totally unemployed, and able and available for work for those weeks. The overpayment issue is moot because the claimant received only benefits for which he was entitled regarding this period.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

May 9, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.