

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY L ANDERSON

Claimant

APPEAL NO. 13A-UI-00028-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A & J ENTERPRISES INC

Employer

OC: 04/15/12

Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Partial Unemployment
Iowa Code Section 96.7(2)(a) – Employer Liability
Iowa Code Section 96.6 – Aggrieved Party

STATEMENT OF THE CASE:

The employer filed an appeal from the December 19, 2012, reference 02, decision that allowed benefits to the claimant based on an agency conclusion that she was partially unemployed. That same decision held that the employer account of A & J Enterprises, Inc., could be charged for benefits, based on a conclusion that the claimant was not performing services in the same pattern of employment as in the base period. A hearing was scheduled for February 4, 2013. A hearing was set for February 4, 2013 and both parties were properly notified. Ms. Anderson was available for the hearing. Nan Aldridge was available on behalf of the employer. After reviewing the administrative file, the administrative law judge concludes that a hearing is unnecessary, as the employer has received all remedy available to the employer under the law. After discussion of the matter with the parties, the administrative law judge enters the following decision based on the contents of the administrative file.

ISSUE:

Whether claimant has been partially unemployed since she established her additional claim for benefits.

Whether the employer may be relieved of charges for benefits paid to the claimant.

Whether the employer is an aggrieved party.

FINDINGS OF FACT:

Peggy Anderson established an “additional claim” for unemployment insurance benefits that was effective December 30, 2012. The additional claim was based on a claim year that had started for Ms. Anderson in April 2012. Ms. Anderson’s base period for purposes of the claim year that started for her back in April 2012 and that will end in April 2013 consists of the four calendar quarters of 2011. Ms. Anderson’s unemployment insurance benefit eligibility is based on a history of full-time employment during the base period. Ms. Anderson requalified for unemployment insurance benefits by earning ten times her weekly benefit amount prior to filing the December 30, 2012 additional claim.

Ms. Anderson had started new, part-time employment with A & J Enterprises, Inc., doing business as Hardees, in September 2012 and continues in the part-time employment at this time. A & J Enterprises, Inc., is not a base period employer for purposes of the claim year that started for Ms. Anderson in April 2012 and that will end in April 2013.

On December 19, 2012, a Workforce Development representative entered the reference 02 decision that allowed benefits to Ms. Anderson based on an agency conclusion that she was partially unemployed. That same decision held that the employer account of A & J Enterprises, Inc., could be charged for benefits, based on a conclusion that the claimant was not performing services in the same pattern of employment as *in the base period*.

On January 31, 2013, a Workforce Development representative entered the reference 04 decision that effectively modified the reference 02 decision to relieve A & J Enterprises, Inc., of liability for benefits paid to Ms. Anderson so long as she continues in the employment under the same conditions as existed before she filed her additional claim for benefits. That decision held that the employment at A & J Enterprises was the same before and after the filing of the additional claim. That decision nonetheless allowed benefits to Ms. Anderson under a theory of partial unemployment, since Ms. Anderson's current position is part time, but her base period wage credits are based on full-time employment.

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 appeal rights and procedures set forth at Iowa Code section 96.6 presuppose and require the existence of an aggrieved party. The employer was an aggrieved party on December 28, 2012, when the employer filed its appeal from the December 19, 2012, reference 02, decision. However, the employer was no longer an aggrieved party as of January 31, 2013, when a Workforce Development representative entered the reference 04 decision that effectively modified the reference 02 decision to relieve the employer of liability for benefits so long as the claimant continues in the employment under the same conditions. The January 31, 2013, reference 04, decision provided the employer with all the remedy available under the law. For that reason, there is no need for a hearing and that the administrative law judge can enter a decision, based on the administrative file, that modifies the December 19, 2012 reference 02, decision to conform with the January 31, 2013, reference 04, decision.

DECISION:

The agency representatives December 19, 2012, reference 02 is modified as follows. Effective December 30, 2012, the claimant is eligible for benefits under a theory of partial unemployment, provided she meets all other eligibility. The employer's account shall not be charged for benefits so long as the claimant continues in the employment under the same conditions as existed before the filing of the December 30, 2012 additional claim. If the employment ends, the employer should notify Workforce Development so that the impact of the separation on the claimant's eligibility and the employer's liability for benefits may be adjudicated. The claimant must report weekly gross wages. Because the claimant's base period wage credits are derived from full-time employment, the claimant must continued to search for full-time employment while her claim for benefits is active.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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