

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA A MOORE
Claimant

PRECISION PAYROLL LLC
Employer

APPEAL 16A-UI-05853-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Appellant (2)

Iowa Code §96.4(3) – Able and Available
Iowa Code §96.19(38)a & b – Total and Partial Unemployment
Iowa Code §96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 16, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the claimant being employed at the same hours and wages as hire. The parties were properly notified about the hearing. A telephone hearing was held on June 10, 2016. The claimant participated personally. The employer participated through Carrie Stielman, payroll. Claimant exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant ineligible for benefits because he was still employed for the same wages and hours as he was originally hired?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant became employed full-time as a union helper during the second quarter of 2015, and performed work for the employer until August 22, 2016 when he was laid off due to a lack of work. The claimant was unemployed during the fourth quarter of 2015, and in first quarter of 2016, performed work for another employer, Sheehan. The claimant performed work for Sheehan until April 6, 2016, when he was permanently laid off due to a lack of work. He was rehired by this employer, Precision Payroll, and performed work from April 7 through April 10, 2016, when he was laid off due to a lack of work. The claimant remained unemployed during the period of April 10, 2016 until May 9, 2016. He resumed work May 10, 2016, and is currently working full-time with overtime at the employer's Richfield, Illinois job site, and makes \$26.24 per hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was unemployed for the period of August 22, 2015, through April 6, 2016, and April 11, 2016 until May 9, 2016 and therefore, the claimant was not still employed at the same wages and hours as he was originally hired.

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".

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

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, 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.

An individual shall be deemed partially unemployed in any week in which 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 Admin. Code r. 871-24.23(26) 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 different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code § 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.

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 § 96.8, subsection 5.

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 § 96.8, subsection 5.

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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

From August 22, 2015, through April 6, 2016, and April 11, 2016 until May 9, 2016, the employer did not have full-time work available for the claimant as contemplated in the original contract of hire. The claimant was unemployed due to a lack of work. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

DECISION:

The May 16, 2016, reference 02, decision is reversed. The claimant was unemployed August 22, 2015, through April 6, 2016, and April 11, 2016 until May 9, 2016, and benefits are allowed, provided he is otherwise eligible. The account of this employer (account number 560283-000), may be liable for charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs