

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENT A MUNSON**

Claimant

**APPEAL NO. 13A-UI-12749-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARA BURNHAM**

**AARON SCALE SYSTEMS INC**

Employer

**OC: 10/06/13**

**Claimant: Respondent (1-R)**

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 November 7, 2012, reference 02, decision that allowed benefits effective October 6, 2013, based on an agency conclusion that claimant Brent Munson was partially unemployed from employment with Aaron Scale Systems, Inc. After due notice was issued, a hearing was held on December 6, 2013. Mr. Munson participated. Keith Elson, Sr., represented the employer and presented additional testimony through Larry Chesmore. Exhibit One and Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUES:**

Whether Mr. Munson was able to work and available for work from the time he established his claim for benefits until the time he separated from the employer.

Whether Mr. Munson was partially unemployed from his employment from the time he established his claim for benefits until the time he separated from the employer.

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

Whether the claimant has been overpaid benefits for the period beginning October 6, 2013 to the separation date.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brent Munson established a claim for unemployment insurance benefits that was effective October 6, 2013. At the time Mr. Munson established his claim for benefits, his primary employer was Aaron Scale Systems, Inc., where Mr. Munson worked as a commercial truck and rail scale cleaner. The employer had historically also assigned various additional duties to Mr. Munson at the employer's shop to fill out the workday, 8:00 a.m. to 4:30 p.m., when Mr. Munson was not

out on a scale cleaning assignment. The employer ultimately discharged Mr. Munson on November 6, 2013, on the same day that Mr. Munson and the employer participated in the fact-finding interview that was scheduled to address Mr. Munson's claim for partial unemployment benefits.

Mr. Munson reported wages and received unemployment insurance benefits as follows:

<u>Benefit week end date</u>	<u>Wages reported</u>	<u>Benefits received</u>
10/12/13	165.00	256.00
10/19/13	157.00	264.00
10/26/13	138.00	283.00
11/02/13	210.00	211.00
11/09/13	75.00	337.00
11/16/13	315.00	106.00
11/23/13	300.00	121.00

Mr. Munson established his claim for benefits in response to the employer, Aaron Scale Systems, Inc., reducing his work hours at or about the start of October 2013. Keith Elson, President of Aaron Scale Systems, Inc., provided Mr. Munson with two reasons for the reduction in work hours. The first reason was that business was slow. The second reason was that Mr. Munson's work in the employer's shop was not to the employer's satisfaction. The employer decided not to use Mr. Munson's services outside of the scale cleaning assignments.

Workforce Development's record of quarterly wages reported by the employer to Workforce Development indicates that for the second quarter of 2013, the employer paid Mr. Munson \$6,566.00. The employer concedes that the figure is accurate. The figure corresponds to an average weekly wage of \$505.00 during the calendar quarter that ended June 30, 2013. Mr. Munson's hourly wage was \$14.00. The \$505.00 average weekly wage divided by \$14.00 an hour indicates that Mr. Munson averaged 36 hours per week during the calendar quarter that ended June 30, 2013.

Workforce Development records of quarterly wages reported by the employer to Workforce Development indicate that for the third quarter of 2013, the employer paid Mr. Munson \$6,239.00. The employer concedes that the figure is accurate. The figure corresponds to an average weekly wage of \$480.00 during the calendar quarter that ended September 30, 2013. The \$480.00 average weekly wage divided by \$14.00 per hours indicates that Mr. Munson averaged 34 hours per week during the third quarter of 2013 that ended September 30, 2013.

For both calendar quarters, Mr. Munson consistently worked much more than the 24 hours per week that the employer asserts Mr. Munson worked.

During the five weeks of the claim that fell during the period when Mr. Munson was still employed by Aaron Scale Systems, the wages he reported to Workforce Development were the combined wages from his primary employment at Aaron Scale Systems, Inc., and his secondary employment at Zio Johnos, Inc., where Mr. Munson was paid minimum wage. Even if the wages had all been from Aaron Scale system, the reported wages would indicate that the employer had only 12 hours for Mr. Munson during the week that ended October 12, only 11 hours for the week that ended October 19, only 10 hours for the week that ended October 26, only 15 hours for the week that ended November 2, and only five hours for the week that ended November 9, 2013.

Since Mr. Munson filed his claim for benefits, Mr. Munson made himself available for all the work the employer had for him and did not decline any work the employer had for him. Mr. Munson has a wife and child to support and desired to continue with the near full-time employment he had enjoyed before the employer cut his hours at the beginning of October 2013.

Aaron Scale Systems is one of Mr. Munson's base period employers.

## **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.]

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

At the time of the hearing, neither Mr. Elson nor his additional witness, Larry Chesmore, was able to provide meaningful information about the hours that Mr. Munson actually worked for the employer. Both deferred to "the secretary" and the need to confer with the secretary about such matters. The information that employer provided to Workforce Development as part of the mandatory quarterly reporting of employee wages squarely contradicts the employer's assertion that Mr. Munson was hired to work part-time, 24 hours a week, or that he usually worked so few hours prior to the cut in hours at the beginning of October. The employer's quarter report of wages for Mr. Munson supports Mr. Munson's assertion that there was a substantial decrease in work hours at the start of October 2013. The evidence also indicates that Mr. Munson continued to be available for full-time work with the employer and did not refuse any work from the time that he established his claim up to time that the employer ended the employment on November 6, 2013. Mr. Munson was indeed able and available for work and partially unemployed from October 6, 2013 through the benefit week that ended November 9, 2013. Mr. Munson is eligible for benefits for that period, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Munson for that period.

This matter will be remanded to the Claims Division for adjudication of the separation and, if appropriate, adjudication of whether the claimant has been able and available for work since November 10, 2013.

#### **DECISION:**

The Agency representative's November 7, 2012, reference 02, decision is affirmed. The claimant was able and available for work, but partially unemployed during the period of October 6, 2013 through the benefit week that ended November 9, 2013. The employer's account may be charged for benefits paid to the claimant for that period.

This matter is **remanded** to the Claims Division for adjudication of the separation and, if appropriate, adjudication of whether the claimant has been able and available for work since November 10, 2013.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs