

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HERBERT WHITE
Claimant

**P & S HOLDINGS LLC
PATTON'S RESTAURANT & CATERING**
Employer

APPEAL NO. 14A-UI-08018-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/29/14
Claimant: Respondent (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Patton's Restaurant & Catering (employer) appealed an unemployment insurance decision dated July 23, 2014, (reference 01), which held that Herbert White (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on August 25, 2014. The claimant did not participate in the hearing. The employer participated through owner Pam Patton. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable or unable to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time dishwasher from July 29, 2013, through July 28, 2014, when he effectively quit his employment. His final separation has not yet been litigated so the case will be remanded for a determination on that issue.

The claimant was hired with no guarantee of hours. He filed a claim for unemployment as of June 29, 2014. The employer's facility was burglarized on June 19, 2014, and sustained considerable physical damage. The entire front window had to be torn out and there were glass and stones throughout the building. The cash register was stolen along with everything that was up front. Since the police were investigating the burglary, nothing could be touched. The employer called the claimant on June 20, 2014, to advise him not to report to work but he showed up anyway.

The restaurant was closed until June 22, 2014, when they opened using a box to hold the money. The employer had a booth at the Des Moines Art Festival for four days ending on June 29, 2014. All employees were offered 12 hours daily if they wanted to work but the claimant never opted to do so but he did go to the Arts Festival to pick up his paycheck from the employer.

During the week ending July 5, 2014, the employer was closed on June 30, 2014, and July 4, 2014. The claimant could have worked June 29, July 2, July 3, and July 5, but did not work. The week ending July 12, 2014, he worked four days from July 8, 2014, through July 11, 2014. The claimant was scheduled for and worked three days the week ending July 19, 2014, and he was scheduled for four days the week ending July 26, 2014, but only worked two days. He worked July 27, 2014, and July 28, 2014, after which he voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective June 29, 2014, and has received benefits after the separation from employment in the amount of \$1,235.00. Owner Pam Patton participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire. The availability requirement is satisfied when a claimant is willing, able and ready to accept suitable work, does not have good cause to refuse the work and is genuinely attached to the labor market. See 871 IAC 24.22(2). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

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). The claimant was hired part-time and continued working in that capacity until he voluntarily quit on July 28, 2014. Prior to that date, he voluntarily limited his availability for unknown reasons and after that date, the claimant was not available to work at all since he quit. The claimant does not meet the availability requirements of the law and benefits are denied.

The claimant has received benefits as a result of this claim in the amount of \$1,235.00. If an individual receives benefits for which they are subsequently determined to be ineligible, the benefits shall be recovered even though the individual acts in good faith and is not otherwise at fault. The Bureau in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. See Iowa Code § 96.3-7.

If the Bureau determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund. See Iowa Code § 96.3-7.

An issue as the claimant's final separation arose as a result of the hearing. This issue was not included in the notice of hearing will be remanded for further determination. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated July 23, 2014, (reference 01), is reversed. The claimant does not meet the availability requirements of the law and benefits are denied. He is overpaid unemployment insurance benefits in the amount of \$1,235.00 and must repay those benefits. The final separation issues raised by the employer are remanded for an investigation and determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs