

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID HURKIN
Claimant

APPEAL 20A-UI-07429-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT-B
Employer

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-23.71(3) – Governmental Entity - Definition

STATEMENT OF THE CASE:

On July 2, 2020, the claimant filed an appeal from the June 25, 2020, (reference 03) unemployment insurance decision that removed wages claimant earned with the employer from his monetary record and reduced his weekly benefit amount. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2020. Claimant participated. Employer participated through human resource manager Heather Redenius. Claimant's Exhibit A was received into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the claimant an on-call worker?
Is the employer's account subject to charge?
Is the claimant serving on a temporary basis during an emergency caused by fire, storm, snow, earthquake, flood, etc.?
Should wages from the employer be removed from the claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 10, 1999. Claimant works for employer as a reserve police officer.

Employer pays reserve police officers \$1.00 per year. It requires reserve officers to undergo training and put in 16 hours of ride time as second officer per month. Employer also allows reserve officers to pick up paid assignments providing security and traffic control at events such

as the state fair or the annual art festival. Employer does not require reserve officers to pick up assignments and assignments are not guaranteed.

Claimant is not temporarily employed by employer because of a natural disaster or other emergency, but may assist in disaster relief as needed as part of assignments that may be available to reserve police officers from time to time.

Claimant has not worked any paid assignments for employer since the COVID 19 pandemic began.

Claimant has other qualifying wages in his base period.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's wages earned with employer are insured and should be included in his monetary record.

Iowa Admin. Code r. 871-23.71(3)(a) provides:

The term "employment" does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

In this case, claimant was not hired by employer on a temporary basis to provide services in a natural disaster or similar emergency. Claimant is a permanent employee whose usual responsibilities involve assisting in an emergency situation, if necessary. The work is covered "employment" and the wages should not have been deleted from the claim.

The next issue is whether claimant is eligible for benefits and whether employer should be charged for benefits.

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".

Iowa Code section 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 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 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 Admin. Code r. 871-24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) 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.

Because claimant was hired for paid work as-needed, he is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any reduction in hours is directly related to the on-call status as no regular hours are guaranteed. However, since claimant is otherwise monetarily eligible for benefits, benefits are allowed and the account of this employer will not be charged.

DECISION:

The June 25, 2020, (reference 03) unemployment insurance decision is modified in favor of the appellant. The wages claimant earned with the City of Des Moines (account number 103206) are insured and shall be added back to his monetary determination. The claimant's on-call status renders availability for this employment moot as he has other wages in the base period. Benefits are allowed as claimant is otherwise monetarily eligible and the account of City of Des Moines (account number 103206) shall not be charged.



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August 20, 2020
Decision Dated and Mailed

cal/scn