

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J HARRISON
Claimant

APPEAL NO. 08A-UI-06682-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IBP FOODS INC
Employer

OC: 06/01/08 R: 01
Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

IBP Foods, Inc. filed an appeal from a representative's decision dated July 11, 2008, reference 01, which allowed benefits to Robert Harrison effective June 1, 2008 but denied the employer relief from charges. After due notice was issued, a hearing was held by telephone on August 28, 2008. Mr. Harrison participated personally. The employer participated by Hal Edrington, Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Harrison is available for work within the meaning of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Harrison has been employed by IBP Foods, Inc. since September 16, 2003. He works full time in production. He filed a claim for job insurance benefits effective June 1, 2008 because he was receiving fewer hours of work than he had previously received. He has not worked fewer than 30 hours during any week since he filed his claim.

The employer guarantees each employee 38 hours of work each week. Two times each year, the employer computes the average number of hours worked each week for a 26-week period. If an individual has worked an average of less than 38 hours each week, he receives additional compensation to increase the average to 38 hours. Mr. Harrison received a payment for 32.27 hours of pay after July 31, 2008. The payment covered hours missed during the period from February 1 through July 31, 2008. The guarantee program has been in effect throughout the course of Mr. Harrison's employment but 2008 was the first time he received a payment for missed hours.

Mr. Harrison remains available to work the same number of hours for the employer as he worked prior to filing his claim for job insurance benefits. Some days he is sent home early if there is not enough work. On other occasions, he is not scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Harrison has been available for work within the meaning of the law since filing his claim for job insurance benefits effective June 1, 2008. He filed his claim due to a reduced workweek. The employer acknowledged that there have been weeks when less work is available. The administrative law judge is satisfied that Mr. Harrison remained available to work the same number of hours he has always worked and would have worked if work had been available. For this reason, it is concluded that he satisfies the availability requirements of Iowa Code section 96.4(3).

The employer's "wage guarantee" program does not affect Mr. Harrison's entitlement to job insurance benefits. The employer does not add hours to each periodic paycheck to reach a total of 38 hours per week. Additional payments are only made two times each year and only if the average number of hours worked each week does not exceed 38 during a 26-week period. The additional payment Mr. Harrison received after July 31, covered the period from February 1 through July 31, which included a period for which he claimed job insurance benefits. This deferred income was reported by Mr. Harrison as wages, which reduced his weekly job insurance benefit amount. The reduction in his benefits translates to a reduction in the employer's liability for benefits.

After considering all of the evidence, the administrative law judge concludes that Mr. Harrison is entitled to job insurance benefits during those weeks in which he worked less than his usual workweek, as he was partially unemployed. The employer is not entitled to a relief of charges but will have reduced liability in the event Mr. Harrison is subsequently paid for the same period and is claiming job insurance benefits.

DECISION:

The representative's decision dated July 11, 2008, reference 01, is hereby affirmed. Mr. Harrison is eligible to receive job insurance benefits effective June 1, 2008, as he was partially unemployed. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw