

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY C BAYLARK**  
Claimant

**APPEAL NO. 13A-UI-02267-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (2-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 21, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. Claimant participated. Employer participated through Claims Administrator Sarah Fiedler. Claimant's Exhibit A was received.

**ISSUES:**

Is the claimant able to and available for work during the period between January 13 and April 6, 2013?

Does the claimant meet the definition of being considered partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as an unhanger assigned at Winegard and paid \$9.20 per hour from November 3, 2010 in a long-term indefinite assignment. He had personal and family health issues, applied for Family Medical Leave Act (FMLA) leave, and was approved. He missed one day of work each of the weeks ending January 19, January 26, March 9, and April 6, 2013 related to FMLA. He missed two days of work the week ending February 2, 2013 because of FMLA. The other days and weeks his hours were reduced after being sent home early due to lack of work by Team Staffing onsite coordinators Kayla or Tamara, who did not participate.

The parties provided conflicting information about the amount of wages claimant reported between January 13 and April 6, 2013. That issue is remanded for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the period between January 13 and April 6, 2013.

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, 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.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Because, during the period between January 13 and April 6, 2013, the claimant was available for the majority of the work week and was not employed under the same hours and wages as contemplated at hire, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer does not offer the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

**DECISION:**

The February 21, 2013 (reference 01) decision is reversed. The claimant was partially unemployed and benefits are allowed, provided he is otherwise eligible. He is required to report gross wages earned for each week of benefits claimed. The employer's account (303492) may be liable for charges.

**REMAND:** The failure to accurately report wages issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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