

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE R MELENDEZ
Claimant

APPEAL NO. 16A-UI-04845-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/26/15
Claimant: Appellant (4)

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:

Jose Melendez filed a timely appeal from the April 18, 2016, reference 07, decision that denied benefits effective March 20, 2016, based on an Agency conclusion that he was not partially unemployed from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held on May 10, 2016. Mr. Melendez participated. Marie Villalpando, Human Resources Manager, represented the employer. Spanish-English interpreter Dr. Berta Cevallos of CTS Language Link assisted with the hearing. Exhibit One was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-C.

ISSUES:

Whether the claimant has been able to work and available for work since establishing the additional claim for benefits that was effective March 20, 2016.

Whether the claimant has been partially unemployed since establishing the additional claim for benefits that was effective March 20, 2016.

Whether the employer's account may be assessed for benefits paid to the claimant in connection with the additional claim for benefits that was effective March 20, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Melendez has been employed by Tyson Fresh Meats on a full-time basis since 2000 and works as a machine operator. Mr. Melendez's usual start time is 7:15 a.m. Mr. Melendez then works until the day's work is done. His usual work week is Monday through Friday, with occasional Saturday overtime.

Mr. Melendez established an original claim for unemployment insurance benefits that was effective April 26, 2015. Tyson Fresh Meats, Inc., is the sole base period employer. At the time, Mr. Melendez established the original claim, Iowa Workforce Development set Mr. Melendez's weekly unemployment insurance benefit amount at \$416.00. Mr. Melendez established an additional claim for benefits that was effective March 20, 2016. Mr. Melendez established the additional claim for benefits in response to a decrease in the number or work hours the employer had available for him. The employer has provided documentation of Mr. Melendez's gross weekly wages and total weekly work hours going back to the end of January 2016, as follows. Those amounts are set forth below, along with the weekly wages that Mr. Melendez has reported to Workforce Development since he established the additional claim for benefits.

Week end date	Gross Wages Paid	Hours	Wages reported by claimant
1/30/16	719.76	50.53	
2/6/16	938.31	61.22	
2/13/16	800.00	51.20	
2/20/16	582.18	43.42	
2/27/16	688.22	48.90	
3/5/16	536.32	41.05	
3/12/16	453.62	27.35	
3/19/16	381.58	29.58	
3/26/16	434.74	33.70	400.00
4/2/16	448.53	34.77	419.00
4/9/16	641.20	46.47	541.00
4/16/16	401.19	31.10	380.00
4/23/16	421.57	32.68	375.00
4/30/16	N/A	N/A	375.00
5/7/16	N/A	N/A	380.00

Mr. Melendez's net weekly wages have at times been significantly decreased due to payroll deductions for repayment of loans he took from his 401k retirement account.

The claim year that began for Mr. Melendez on April 26, 2015 expired on April 23, 2016. Mr. Melendez has not yet taken steps to establish a new claim year.

Since Mr. Melendez established the additional claim for benefits that was effective March 20, 2016, he has not requested time off, has not refused work the employer may have available for him, and has remained available for the work the employer has available for him.

Mr. Melendez's base period for purposes of the claim year that began for him on April 26, 2015 consists of the four quarters of 2014. The employer has reported Mr. Melendez's quarterly wages to Workforce Development. The quarterly wages, and corresponding average weekly wage, since the beginning of the base period have been as follows:

<u>Quarter</u>	<u>Quarterly Wages</u>	<u>Average Weekly Wage</u>
2014/1	7,062.22	543.25
2014/2	6,434.67	494.97
2014/3	6,443.51	495.65
2014/4	9,886.11	760.47
2015/1	7,033.02	541.00
2015/2	6,689.84	514.60

2015/3	8,218.79	632.21
2015/4	11,422.55	878.66
2016/1	8,725.71	671.21

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

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.]

The evidence in the record establishes that Mr. Melendez has been able to work and has been available to perform all the work the employer has had for him since he established the additional claim that was effective March 20, 2016.

The evidence in the record, including the employer's own exhibit, supports Mr. Melendez's assertion that in March 2016 the employer decreased the amount of work hours the employer had available for him. The employer's records reflect that the employer had less than full-time hours available for Mr. Melendez during the weeks that ended March 12, March 19, March 26, April 2, April 16, April 23, and April 30, 2016.

During the week that ended April 9, 2016, Mr. Melendez was working full-time hours for the employer. Because he was working full-time and receiving full-time wages, Mr. Melendez cannot be deemed partially unemployed during that week and is not eligible for benefits for that week.

Mr. Melendez's weekly benefit amount was set at \$416.00. That amount plus \$15.00 is \$431.00. Mr. Melendez was partially unemployed during those weeks when the employer has less than his regular full-time hours available for him and his gross wages did not exceed \$431.00. The weeks that ended April 16 and April 23, 2016 were the only weeks in the claim year that met both requirements of the partial unemployment test. Mr. Melendez is eligible for benefits for those weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Melendez for those two weeks.

During weeks that ended March 26 and April 2, 2016, Mr. Melendez's gross weekly wages exceeded his weekly benefit amount by more than \$15.00. Accordingly, Mr. Melendez cannot be deemed partially unemployed during those weeks.

Because the claim year expired on April 23, 2016 and because Mr. Melendez has not taken steps to establish a new claim year on or after April 24, 2016, there is no need for the administrative law judge to further consider the week that ended April 30, 2016, the week that ended May 7, 2016, or any subsequent week.

DECISION:

The April 18, 2016, reference 07, decision is modified as follows. The claimant was able to work and available for work from March 20, 2016 through the expiration of the benefit year on April 23, 2016. The claimant was partially unemployed during the weeks that ended April 16 and April 23, 2016. The claimant is eligible for benefits for those weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Melendez for those two weeks. The claimant was not partially unemployed during the weeks that ended March 26, April 2, and April 9, 2016. The claimant is not eligible for benefits for those weeks under a theory of partial unemployment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs