

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY D LICK
Claimant

APPEAL NO. 07A-UI-04525-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 02/04/07 R: 04
Claimant: Respondent (4)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The Hon Company filed a timely appeal from the April 26, 2007, reference 02, decision that allowed benefits effective April 15, 2007. After due notice was issued, a hearing was held on May 21, 2007. Claimant Randy Lick provided a telephone number for the hearing, but was not available at that number at the scheduled start of the hearing and did not participate. Group Leader Steve Minder represented the employer and presented additional testimony through MCR Generalist Sue McDonald. The administrative law judge took official notice of the Agency record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his additional claim for benefits, effective April 15, 2007.

Whether the claimant has been temporarily or partially unemployed and, therefore, is exempt from the availability requirements of Iowa Code section 96.4(3).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Lick established an “additional claim” for unemployment insurance benefits that was effective April 15, 2007 and has received benefits. Mr. Lick has been employed by The Hon Company as a full-time production worker for at least two years, during which time his immediate supervisor has been Group Leader Steve Minder. When the employer closes the production on line on which Mr. Lick works, the employer usually makes other comparable work available to avoid a layoff. During the benefit week that ended April 21, 2007, the employer closed the production line on which Mr. Lick worked on two days, April 19 and 20. On those two days, the employer did not have any other work available for Mr. Lick. During the week that preceded Mr. Lick’s claim for benefits, the employer closed the production line for one and a half days and did not have other work available. These two weeks represented a deviation from the employer’s usual practice. After the benefit week that ended April 21, the employer returned to its usual practice of making other work available.

REASONING AND CONCLUSIONS OF LAW:

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".

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). 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 Code section 96.19(38)(c).

The evidence in the record indicates that Mr. Lick was partially unemployed during the benefit week that ended April 21, 2007. Accordingly, Mr. Lick was exempt from the availability requirements of Iowa Code section 96.4(3) and would be eligible for benefits, provided he is otherwise eligible. The evidence indicates that since April 22, the employer has had full-time work available to Mr. Lick and, accordingly, Mr. Lick would no longer be partially unemployed. Under the facts of this case, Mr. Lick's eligibility for unemployment benefits based on the "additional claim" effective April 15, 2007 would be limited to the benefit week that ended April 21, 2007. If the employer experiences a future similar shut down of the production line on which Mr. Lick works, Mr. Lick's eligibility for benefits would need to be determined at that time based on the circumstances in place at that time.

DECISION:

The Agency representative's April 26, 2007, reference 02, decision is modified in favor of the employer/appellant as follows. The claimant was partially unemployed during the benefit week that ended April 21, 2007 and is eligible for benefits for that week, provided he is otherwise eligible. The claimant's partial unemployment was limited to the benefit week that ended April 21, 2007 and, accordingly, benefits are limited to that week. If the employer experiences a

future similar shut down of the production line on which the claimant works, the claimant's eligibility for benefits will need to be determined at that time based on the circumstances in place at that time.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs