

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E CARTER
Claimant

APPEAL NO: 13A-UI-03438-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL CITY BOILER & MACH WKS INC
Employer

OC: 01/13/13

Claimant: Respondent (2/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Capital City Boiler and Machine Works, Inc. (employer) appealed a representative's March 21, 2013 decision (reference 02) that concluded Michael E. Carter (claimant) was qualified to receive unemployment insurance benefits as of March 3, 2013. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Becky Johnson appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant employed by the employer for less than his usual hours and wages during the benefit week ending March 9, 2013 even though he remained able and available for work, and was he therefore eligible for full or partial unemployment insurance benefits for that week?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on August 13, 2012. He worked full time as a welder and pipefitter.

The claimant was laid off work for a short period of time in January 2013, and had established a claim for unemployment insurance benefits effective January 13, 2013. His weekly benefit amount was calculated to be \$411.00, and his earning allowance as \$426.00. He reopened that claim by filing an additional claim effective March 3, 2013. He filed a weekly continued claim for one week, the week ending Saturday, March 9, 2013. During that week he reported earning \$200.00 in wages, and was paid a partial benefit based on that report.

The claimant did only work one day during the period of March 3 through March 9; he worked nine hours of double-pay overtime on Sunday, March 3, grossing \$405.00. He called off work on Monday, March 4, and then was a no-call, no-show on March 5, March 6, March 7, and March 8. Continued work was available for him on those dates; in fact, the employer had to call in another employee from elsewhere to cover the work that had been available for the claimant.

The claimant called the employer on March 11 to inquire if he could still come back to work. He explained that he had had some personal issues to deal with the prior week, and apologized for not calling in. He was allowed to return to the employment, which he did on March 12. He continued in the employment through April 5, 2013. Some evidence was provided to indicate that the employment was then ended on April 8, 2013; no determination has yet been made regarding that separation.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00. Iowa Code §96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to him. Rather, he must remain available for work on the same basis as when he was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's earnings for the week ending March 9 were below the \$426.00 partial eligibility level is because he was not able and available to work the number of hours the employer had available to him, and he is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment is remanded the Claims Section.

An issue as to whether there has been a subsequent disqualifying separation from employment arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated March 21, 2013 (reference 02) is reversed. The claimant is not eligible for partial unemployment insurance benefits for the benefit week ending March 9, 2013. The matter is **REMANDED** to the Claims Section for investigation and determination of the overpayment issue. The matter is further **REMANDED** to the Claims Section for investigation and determination of the separation issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs