

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY A DYER
Claimant

APPEAL NO: 13A-UI-01335-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOTHIC VILLAGE INC
Employer

OC: 06/10/12

Claimant: Appellant (2)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Tracy A. Dyer (claimant) appealed a representative's January 28, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits as of December 30, 2012 in conjunction with his employment with Gothic Village, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 6, 2013. The claimant participated in the hearing and presented testimony from one other witness, Karen Robinson. Virginia Hindsley appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than his usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in at least 2009, if not 2007. He works part time as a jack-of-all-trades, doing maintenance, carpentry, snow removal, yard mowing, and operating an embroider machine, in assistance to the employer's home care business. He continued in that capacity at least as of the date of the hearing in this case.

Prior to January 2012 the claimant was working a minimum of 20 hours per week. His hourly rate of pay since about 2010 has been \$10.00 per hour. In January 2012 the employer moved its offices into a smaller location. It no longer had room for the claimant on a regular basis, and placed him on an on-call basis.

The claimant established an unemployment insurance benefit year effective June 10, 2012. He reopened that claim by filing an additional claim effective December 30, 2012. The claimant's base period for his benefit year is the first quarter 2011 through the fourth quarter 2012. Based upon his employment with the employer during that period, his average weekly wage was determined to be \$193.85 (indicating an average work week of 19.39 hours), and his weekly

benefit amount was determined to be \$109.00. The claimant is seeking full or partial unemployment insurance benefits for weeks since December 30, 2012 in which he works less than 19.39 hours and earns less than \$124.00 (\$109.00 plus \$15.00) because the employer does not have as much work for him as during his base period.

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.

At least as of December 30, 2012, the employer was not providing the claimant with substantially the same employment as it provided during his base period. The claimant has not changed his availability for work. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his additional claim effective December 30, 2012, provided he was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

DECISION:

The unemployment insurance decision dated January 28, 2013 (reference 02) is reversed. The claimant is eligible for partial unemployment insurance benefits effective December 30, 2012.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs