

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS L KESSLER**

Claimant

**APPEAL NO: 12A-UI-06498-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED OAK DO-IT CENTER**

Employer

**OC: 05/06/12**

**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
Section 96.19-38 – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated May 24, 2012, reference 01, that held he was still employed at the same job, hours and wages on May 6, 2012, and benefits are denied. A telephone hearing was held on June 26, 2012. The claimant participated. Yvonne Carlson, Bookkeeper, participated for the employer.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working for the employer on August 6, 2001, and he has continued as a part-time sales/receiving person as of the date of this hearing. The employer record shows his average weekly hours as follows: 31 – 2009; 30.75 – 2010; and 29+ - 2011.

The employer hired an additional employee in January 2012. Claimant's average weekly hours by month for 2012 are as follows: January – 27; February – 25.5; March and April – 24.5. More recently, the employer made a decision to increase the new employee work from 3 to 4 days a week. The claimant's work hours have averaged 16.5 for May and 17.5 for June. His \$7.25 an hour pay rate has remained constant for the past year. He took the day off on May 19 when he could have worked 8.5 hours but worked 5 hours the next day to offset it.

The employer reported claimant earnings for these quarters/years as follows: 2/2011 - \$210.92; 3/2011 - \$225.69; 4/2011 - \$3,146.00; and 1/2012 - \$185.92. His average weekly wage during his base period is \$242.02. His weekly benefit amount (WBA) is \$136.00.

## 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".

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 administrative law judge concludes claimant has been able and available for work since the inception of his May 6, 2012 unemployment claim so no availability disqualification is imposed. The one May 19 day claimant took off was significantly offset by him working the next day.

The administrative law judge further concludes the claimant is partially unemployed due to a substantial reduction of his work hours as established by his base period employment history with the employer. He is entitled to a partial benefit in any week where he earns less than his WBA plus \$15.00.

Claimant averaged at or near 30 hours of weekly work in 2011 until the employer made a business decision to hire a new employee in January 2012. His hours dropped each week

during the first four months of 2012 to 24.5 in April, and then were substantially reduced to 16.5 in May when the employer increased the new employee to working four days.

**DECISION:**

The department decision dated May 24, 2012 reference 01 is reversed. The claimant is able and available for work and partially unemployed effective May 6, 2012. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs