

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEOPOLD W DELGADO

Claimant

AMERICAN BLUE RIBBON HOLDINGS LLC

Employer

APPEAL NO: 13A-UI-10804-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 19, 2013, reference 02, that held he was still employed working same hours and wages as of August 11, 2013 benefits are denied. A telephone hearing was held on October 16, 2013. The claimant participated. Chris Scheibe, Representative, and Jennifer Moeller, Associate Manager, 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 witness testimony and having considered the evidence in the record finds: The claimant began work for the employer on February 21, 2013, and last worked as a part-time cook/dishwasher leading to his claim filing on August 11. He was paid \$9.50 an hour.

The department record shows claimant earnings: third quarter 2012 - \$3,876.00; fourth quarter 2012 - \$2,372.00; first quarter 2013 - \$1,536.00; and, second quarter 2013 - \$3,890.00. The employer record shows during claimant's period of employment he usually was scheduled anywhere from 22 to 29.5 weekly hours.

Claimant offered during the hearing that he worked from July 14 through August 10 (four weeks) weekly hours of 22, 20, 20, and 25. The employer record shows he was scheduled for 29.5, 22, 22, and 22 for the same weeks.

Subsequently claimant separated from this employment in September and the department issued a decision October 11, 2013 it was a voluntary quit without good cause, benefits are denied. Claimant appealed and this matter is pending (13A-UI-11485).

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 that claimant does meet the availability requirements of the law for partial unemployment benefits effective August 11, 2013.

Claimant's contention he was a full-time employee averaging 35 to 40 weekly hours is not supported by the department wage records. Even considering the highest earnings quarter (second 2013 - \$3,890.00), at \$9.50 an hour for a 13-week period would mean an average of about 30 hours a week. A range of 22 to 29 hours is substantially what claimant had worked for the employer during his employment history as he was in July/August 2013 such that he was not partially unemployed.

DECISION:

The department decision dated September 19, 2013. reference 02. is affirmed. The claimant is not eligible for benefits effective August 11, 2013, as he was not partially unemployed due to a substantial reduction of work hours.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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