

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM L MANTOR**  
Claimant

**APPEAL NO: 10A-UI-01952-ST**

**PATRICIA KLECKER**  
**PAT'S CLEANING SERVICE**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/09**  
**Claimant: Appellant (2-R)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 3, 2010, reference 02, that held he was not eligible for benefits effective December 1, 2009, as he was still employed at the same hours and wages. A telephone hearing was held on March 17, 2010. The claimant participated. Patricia Klecker, Owner, 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 performing janitorial service in September 2003. The claimant would work as many as 80 hours in a bi-weekly pay period up until 2008 when his hours were reduced due the employer losing a cleaning contract.

When the claimant's part-time hours were reduced in August 2009, he filed a claim for partial benefits. The claimant's weekly benefit amount is \$282.00, and he is entitled to partial benefits in any week he earns less than that amount plus fifteen dollars (\$297.00) The claimant was down to working about 20 – 25 hours in a bi-weekly pay period, so he accepted employment at Prospector (er#247839) in early September, and ceased claiming benefits. The claimant continued working such part-time hours for his employer as were made available to him.

When the claimant got laid-off at Prospector, he re-opened his claim effective January 3, 2010. The claimant continued to work all part-time hours for the employer. The employer protested this claim on the basis that its account should not be charged due to claimant's lay-off from another employer. The department issued a decision denying any relief of charges, and the employer did not appeal. When the claimant was denied benefits, he quit his job on February 4,

2010 to go back to Prospector where he is working part-time hours with the prospect of returning to full-time hours.

**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 the claimant was able and available for all part-time work made available to him by the employer, and is partially unemployed/eligible for benefits.

The record established that since August 2009, the claimant's part-time hours have been reduced to about 20 to 25 hours a week, and he has worked all hours made available to him. Due to the reduction in hours, the claimant accepted a full-time job at Prospector in September 2009, and continued to work part-time for the employer. The claimant ceased claiming unemployment the week ending September 5. When the claimant was laid-off by Prospector,

he re-opened his claim effective January 3, 2010. The claimant is eligible for partial benefits, as he continues to work such part-time hours that are made available to him by the employer.

The administrative law judge concludes the separation from employment issued is remanded to claims for fact-finding. The claimant quit his part-time job for the employer on February 4, 2010 to return to his job at Prospector on a part-time basis while waiting to return to full-time hours.

**DECISION:**

The department decision dated February 3, 2010, reference 02, is reversed. The claimant is eligible for benefits effective August 9, 2009, as he is partially unemployed. The February 4, 2010 separation from employment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs