

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RAY A LIGHT
Claimant

APPEAL NO: 18A-UI-11755-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEONARDOS PIZZA
Employer

OC: 10/28/18
Claimant: Respondent (2R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications/Same Hours and Wages I

STATEMENT OF THE CASE:

The employer filed an appeal from the November 30, 2018, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2018. The claimant participated personally. The employer participated through Mike Steffans, general manager/office administrator. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant working the same hours and wages for which he was hired?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established his claim effective October 28, 2018, in response to a permanent separation with Pilot Travel Centers LLC.

From June 1, 2018 until July 19, 2018, the claimant worked for this employer, part-time as a line cook. He was not guaranteed a set number of hours. His permanent separation with this employer occurred before his benefit year began, and has not been adjudicated at the claims level yet.

The claimant has since begun new employment in December 2018 at Gringos Restaurant, part-time. He earns \$10.00 per hour and works 10-20 hours per week. The claimant continued making weekly continued claims after beginning his employment at Gringos Restaurant in Cedar Rapids, but did not report all wages earned each week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 either of the following apply:

(1) 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.

(2) 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.

In this case, the claimant separated from employment on July 19, 2018, months before he established a claim for unemployment insurance benefits. Therefore, the issue of whether he is working at the same hours and wages for which he was hired or is partially unemployed based on his relationship with this employer is moot.

REMAND: The permanent separation issue with this employer, effective July 19, 2018, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND: The claimant's unreported wages on his weekly continued claims from the claimant's new employment with Gringos Restaurant (beginning December 2018) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The November 30, 2018, (reference 02) decision is reversed. The claimant is not partially unemployed. Benefits are denied.

REMAND: The permanent separation issue with this employer, effective July 19, 2018, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The claimant's unreported wages on his weekly continued claims from the claimant's new employment with Gringos Restaurant (beginning December 2018) is also remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn