

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DREW R VASKE
Claimant

PELLA CORPORATION
Employer

APPEAL 19A-UI-00520-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/30/18
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 11, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on February 5, 2019. Claimant did not register for the hearing and did not participate. Employer participated through human resource manager Amber Jaworski. Department manager Ashley Dominguez observed. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant eligible to receive partial benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer shut down production from December 24, 2018, through January 1, 2019. However, it offered work for any employees who needed a paycheck for the week. Claimant did not request to work during the shutdown. Therefore, claimant did not work on December 31, 2018. Claimant did not work on January 1, 2019, but was paid eight hours of holiday pay for the day. Claimant worked on January 2, 3, and 4, 2019. Employer paid claimant for 24 hours of work during the one week ending January 5, 2019. Claimant earns \$20.24 per hour. Claimant was paid \$647.68 for the one week ending January 5, 2019. Claimant's weekly benefit amount is \$467.00. Claimant resumed his regular full-time schedule after the week ending January 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and is not available for work effective December 30, 2018.

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.

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 Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In this case, claimant worked and earned more than his weekly benefit amount plus fifteen dollars during the one week ending January 5, 2019. Therefore, he is not considered partially or totally unemployed that week. He remains employed to a degree that removes him from the labor market. Therefore, he is not eligible for benefits.

Because claimant is not eligible for benefits, the issue regarding employer chargeability is moot and will not be discussed further in this decision.

DECISION:

The January 11, 2019, (reference 01) unemployment insurance decision is reversed. The claimant is not unemployed and is not available for other work. Therefore, benefits are denied.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn