

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL W MURPHY
Claimant

APPEAL NO: 14A-UI-05279-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/13/14

Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Daniel W. Murphy (claimant) appealed a representative's May 13, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits because he was not considered partially unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and register a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than his usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 28, 2011. He works part time as a greeter at the employer's Dubuque Iowa store. As of December 28, 2013 his hourly pay was \$9.40; prior to that it was \$9.00.

The claimant has other employment as a tax preparer. He most recently worked for that employer from December 9, 2013 through April 15, 2014. After he was laid off at the end of the tax season, he established a claim for unemployment insurance benefits effective April 13, 2014. His weekly benefit amount was calculated to be \$303.00. His base period for his claim is January 1, 2013 through December 31, 2013. The weekly benefit amount was determined including wage credits from both of his employers.

The high quarter of his base period was the first quarter 2013, but this included a bonus from this employer for work in the prior quarter. The more typical quarter as to the claimant's employment with this employer was the third quarter 2013, in which the claimant was paid \$2,769.00 from this employer, averaging about \$216.00 per week. Since establishing his claim

effective April 13, 2014 there have been some weeks in which the employer has not provided the claimant enough hours to earn at least \$216.00 (at his current rate of pay, about 23 hours per week), even though the claimant was otherwise available to work at least enough hours to reach that threshold.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he has been permanently or temporarily separated from one employer and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment during his base period and remains in that employment, he continues to be eligible for benefits but that employer will not be subject to charge as long as he is receiving the same employment from the part-time employer that he received during the base period. Rule 871 IAC 23.43(4)a.

The claimant was separated from his other employer and continued to work for this other part-time base period employer. While there have been weeks that this employer has provided the claimant with at least the same level of employment as it had during his base period, there have been some weeks since April 13, 2014 where the employer was not providing the claimant with that same level of employment. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his claim effective April 13, 2014, provided he is otherwise eligible.

To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. Rule 871 IAC 24.52(8); Iowa Code § 96.3-3.

DECISION:

The unemployment insurance decision dated May 13, 2014 (reference 01) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits effective April 13, 2014. The employer is exempt from charge for benefits paid for weeks where the employer provides the claimant at least 23 hours of work or \$216.00 in wages.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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