

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER R DAVIS
Claimant

APPEAL NO: 09A-UI-15405-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

T & G'S INC
Employer

OC: 07/12/09

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

T & G's Inc. (employer) appealed a representative's October 9, 2009 decision (reference 02) that concluded Tyler R. Davis (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2009. The claimant participated in the hearing. Heather Shelton appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 18, 2008. He works part time as a commercial floor installer. He continues to work in that capacity. His hours vary from week to week depending on need. He is typically to report or call by 8:00 a.m. each day to learn what work is scheduled for him.

The claimant was concerned that his hours were dropping due to lack of demand, and so the claimant established an unemployment insurance benefit year effective July 12, 2009. As a result, by statute his base period was determined to be from April 1, 2008 through March 31, 2009. Based upon the employer's report of wages to the Agency, the high quarter of the claimant's base period was the fourth quarter 2008, in which the employer paid him wages of \$3,233.00. His hour wages for all but about one week of that quarter was \$8.50, so during that quarter he was averaging about 29 hours per week. From the wage reports filed by the employer, the claimant's average weekly wage for the high quarter of his base period was determined to be \$248.73. Based upon this figure, his weekly benefit amount was calculated to be \$140.00. This compares to the employer's calculation of the claimant's overall average weekly hours for 2008 of 22.7.

The claimant did not file any weekly claims for July or August after establishing his base claim for unemployment insurance benefits; there were weeks during that period that the claimant was not available to work all of the hours the employer could have provided to him. The claimant reopened the claim by filing an additional claim effective September 13, 2009 and began filing weekly claims and receiving partial unemployment insurance benefits for weeks in which his earnings were less than \$155.00 (\$140.00 + \$15.00). He has been able and available for all hours the employer is able to provide to him since September 13, 2009.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in the partial employment. Iowa Code § 96.19-38-b. The determination as to what his “usual hours and wages” is determined looking at the average weekly wage for the high quarter of the base period as calculated from the wage reports filed by the employer, not a separate analysis of time records for a period of time. Iowa Code § 96.3-4.

A part-time employee can be eligible to receive full or partial unemployment insurance benefits when he is not employed in the same pattern established during his base period so long as he is available to the same degree and to the same extent as when the wage credits were accrued. 871 IAC 24.22(2)(f). Beginning on or about September 13, 2009, the employer was not providing the claimant with substantially the same employment as it provided during the pertinent quarter of his base period. He was available for all of the hours the employer could provide for him from that date forward. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his additional claim effective September 13, 2009, provided he was otherwise eligible.

DECISION:

The unemployment insurance decision dated October 9, 2009 (reference 02) is affirmed. The claimant is eligible for partial unemployment insurance benefits for the period beginning September 13, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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