

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN D MELNICK**  
Claimant

**CHAMPION CRANE SVC INC**  
Employer

**APPEAL NO. 24A-UI-01487-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/14/24  
Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code section 96.1A(37) - Partial Unemployment

**STATEMENT OF THE CASE:**

On February 6, 2024, the employer filed a timely appeal from the January 30, 2024 (reference 01) decision that allowed benefits to the claimant for the period beginning January 14, 2024, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able and available for work but that the employer was not providing the same employment as in the base period. In other words, the deputy allowed benefits under a theory of partial unemployment, provided the claimant was otherwise eligible. After due notice was issued, a hearing was held on February 28, 2024. John Melnick (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Ben Six represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO and DBRO.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning January 14, 2024.

Whether the claimant was partially and/or temporarily unemployed for the period beginning January 14, 2024..

Whether the claimant filed any weekly claims after establishing the additional claim for benefits that was effective January 14, 2024.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

John Melnick (claimant) established an original claim for unemployment insurance benefits that was effective January 14, 2024. Iowa Workforce Development set the weekly benefit amount at \$604.00. After Mr. Melnick established his claim for benefits, he did not make weekly

unemployment insurance claims. The claimant has received no benefits in connection with the claim.

Champion Crane Service, Inc. is the sole base period employer. Mr. Melnick is employed by Champion Crane Service, Inc. as a full-time crane operator. The work hours vary depending on the needs of the project but are generally 7:00 a.m. to 3:30 p.m., Monday through Friday. The claimant's base hourly wage has at all relevant times been \$34.65 but is higher when the employer works on a government project that mandates a higher wage.

During the week of January 14, 2024, the employer closed its business on Monday, January 15, 2024, due to severe winter storm weather. On Wednesday, January 17, 2024, Mr. Melnick worked from 6:00 a.m. to 6:00 p.m. On January 18, 2024, Mr. Melnick worked from 7:15 a.m. to 3:30 p.m.. On January 19, 2024, Mr. Melnick worked 7:30 a.m. to 3:30 p.m. The claimant's wages for these three days totaled at least \$874.91, more than \$15.00 over the \$604.00 weekly benefit amount. Mr. Melnick did not work for the employer on January 16, 2024. It is unclear whether the absence of work hours on January 16 was due to a continued weather-related closure or due to the claimant taking time off..

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code section 96.1A(37) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Administrative Code section 871 IAC 24.2(1)(g) provide as follows:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

The claimant is not eligible for benefits for the period beginning January 14, 2024. The claimant did not make any weekly claims and cannot be considered for benefits in the absence of weekly claims. In the absence of a claim, the claimant would not meet the availability requirement. Though the employer only had reduced hours for the claimant during the week of January 14-20, 2024, the claimant's earned wages during that week exceeded the weekly benefit amount plus \$15.00. For that reason, the claimant cannot be deemed partially unemployed during that week.

**DECISION:**

The January 30, 2024 (reference 01) decision is REVERSED. The claimant is ineligible for benefits for the period beginning January 14, 2024. The claimant did not make any weekly claims and cannot be considered for benefits, or be deemed to meet the availability requirement, in the absence of weekly claims. The claimant has not been partially unemployed since he established his claim. Benefits are denied effective January 14, 2024.

In the absence of weekly claims,, the able and available, and partial and/or temporary unemployment issues are essentially moot. The present decision will have no impact on the claimant's potential future eligibility for benefits or the employer's potential future liability for benefits in the event the claimant reactivates the claim at some future date.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

March 5, 2024  
Decision Dated and Mailed

jet/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.