

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

WES R LANGLEY

Claimant

and

CROSSMARK INC

Employer

HEARING NUMBER: 17BUI-07352

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3, 24.23-26

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Wes R. Langley, worked for Crossmark, Inc. from October 12, 2016 through August 5, 2017 as a part-time data collector averaging a wage at approximately \$12/hour. (4:14-4:55; 13:39-13:45) At the start of his employment, the Employer told Mr. Langley he would be working approximately 20-25 hours weekly for which he generally worked 15-20 hours at the beginning. (5:35-5:44; 9:20-9:24) His hours were determined by the number of jobs available, which the Employer gave him at the beginning of each week to complete by that week's end. (5:19-5:28)

During the last couple of months of his employment, the Employer reduced the Claimant's hours back to no more than 2-5 hours per week. (5:48-5:52; 6:06-6:13) The Claimant believed the hours would pick up soon. When his hours did not increase to what he was originally told, Mr. Langley filed for unemployment benefits on June 26, 2017. (6:21-6:23) The Claimant worked another part-time job for which he worked even less hours than when he started with Crossmark. (11:17-11:35) Both part-time jobs equal approximately 7-10 hours of work weekly. (11:57-12:00) The Claimant continues to look for additional work.

The Employer did not participate in the Fact-finding Interview or the hearing before the administrative law judge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) (2017) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19(38) "b" provides:

An individual shall be deemed partially unemployed in any week in which, 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...

Although the Claimant was not, in fact, a full-time employee, by analogy, the Claimant had established a regular work week consisting of 15-20 hours. Once his hours fell below that measure, he continued to be able and available for work. According to his testimony, the Claimant worked at a minimum 15 hours weekly at \$12 an hour (\$180). And given the reduction in his hours, even if we were to consider the least amount of reduction (5 hours at \$12 an hour equaling \$60), the Claimant was still earning less than his weekly benefit amount (\$141) (13:17-13:19) plus \$15 dollars.

Mr. Langley provided unrefuted testimony that he was no longer employed in his part-time job at Crossmark to the degree as contemplated by his original contract of hire. Rather he experienced a significant reduction in his hours and consequently to his pay. Although the Claimant did not quit his part-time position there, he chose instead to file for unemployment benefits while looking for additional employment. Had the Claimant simply quit his employment, there is no doubt Mr. Langley would have qualified based on a change in his contract of hire. However, based on this record, Mr. Langley established that he is able and available for work nearly to the same degree he was when he started working for this Employer, minus five hours, which he could complete in one day. For all intents and purposes, the Claimant is partially unemployed within the meaning of the law.

The only reason the Claimant delayed applying for benefits was because he expected his original hours to be restored. He had no idea, nor is there any evidence to establish that the Claimant agreed to a permanent reduction in his hours. The Claimant continues to look for additional work. The Employer did not participate in the hearing, and consequently provided no evidence to refute the Claimant's testimony. Based on this record, we conclude that the Claimant satisfied his burden of proof, and has established his eligibility for unemployment benefits.

DECISION:

The administrative law judge's decision dated August 8, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was able and available for work. Accordingly, he is allowed benefits provided he is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv