

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TOM A HARMAN
5895 D AVE
MARCUS IA 51035

PETE BINDER INC
4953 D AVE
MARCUS IA 51035

Appeal Number: 04A-UI-00213-DT
OC: 11/30/03 R: 01
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Tom A. Harman (claimant) appealed a representative's January 5, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Pete Binder, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing was held on January 28, 2004. The claimant received the hearing notice and responded by calling the Appeals Section on January 20, 2004. He indicated that he would be available at the scheduled time for the hearing at telephone number 712/376-4368. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Julie Binder appeared on the employer's behalf. When the administrative law judge contacted Ms. Binder for the hearing, she concurred that the administrative law judge should enter a decision based upon a review of the information in the

administrative file that would modify the representative's decision and allow partial unemployment insurance benefits for any weeks for which the claimant might be qualified as being partially unemployed. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on or about March 1, 1999. He normally works full time. In late November 2003, the claimant was laid off for one day but was then recalled. He established a claim for unemployment insurance benefits effective November 30, 2003 as it was uncertain how long he was going to be off or whether there might be additional weeks that there would be less than full time work available. Based upon his wage history, his weekly benefit amount was calculated to be \$339.00. He filed a weekly claim for benefits for the week ending December 6. Ultimately he was paid gross wages for that week in the amount of \$396.24. There were other subsequent weeks in which he filed weekly claims and reported wages, also in excess of \$354.00.

He remains employed with the employer with the same base hours and wages as in the past; however, there currently are some weeks in which there may be less than full time hours available for a particular week.

REASONING AND CONCLUSIONS OF LAW:

The true issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. Iowa Code Section 96.19-38-b provides in pertinent part:

b. 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.

There were some weeks in which the claimant was working less than his regular workweek due to lack of work effective November 30, 2003, and he is entitled to partial unemployment insurance benefits for any week in which his gross earnings were less than his weekly benefit amount plus \$15.00. To date, while there are weeks in which the claimant worked less than his regular workweek, there have been no weeks for which his gross earnings were less than \$354.00 (\$339.00 + \$15.00).

DECISION:

The unemployment insurance decision dated January 5, 2004 (reference 01) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits, provided he is otherwise eligible, for weeks in which his gross earnings are less than \$354.00.

ld/s