

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

STAN HOPKINS
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WATERLOO IA 50703

J & M PARTNERSHIP
MCDONALDS
2016 HOWARD AVE
WATERLOO IA 50702

Appeal Number: 04A-UI-05945-SWT
OC 05/02/04 R 03
Claimant: Respondent (1)

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 96.4-3 - Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 21, 2004, reference 02, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since his hours had been reduced. A telephone hearing was held on June 21, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Terri Torres participated in the hearing on behalf of the employer with a witness, Adam Chamberlain.

FINDINGS OF FACT:

The claimant has worked part-time for the employer as a crew person since April 1, 2003. His normal work schedule was four hours per day on four to five days per week. His rate of pay was \$6.55 per hour.

The claimant's hours were reduced to four hours per week for the week ending May 8, 2004. As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of May 2, 2004. His weekly benefit amount was determined to be \$75.00 based on the wages paid to the claimant by the employer during his base period.

During the week ending May 8, 2004, the claimant worked less than his regular hours and had earnings less than his earnings allowance of \$90.00. After the week ending May 8, 2004, the claimant stopped filing for unemployment insurance benefits because the employer increased his hours.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective May 2, 2004. The claimant filed a claim requesting partial unemployment insurance benefits for the week ending May 8, 2004, because his hours were reduced and his earnings were less than his weekly benefit amount.

Iowa Code Section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code Section 96.19-38-b provides in 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.

The preponderance of the evidence establishes the claimant's regular workweek at the point he filed his new claim was 16 to 20 hours per week. He was working less than his regular workweek due to a reduction in hours effective May 2, 2004, and he was entitled to partial unemployment insurance benefits since his earnings were less than his weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code Section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours he was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code Section 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the 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.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated May 21, 2004, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits for the week ending May 8, 2004, if he is otherwise eligible. The employer's account will be subject to charge for benefits paid to the claimant.

saw/kjf