

**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**

**PHILIP E HAYES  
APT 8  
1000 – 24<sup>TH</sup> ST  
DES MOINES IA 50311**

**PEOPLE 2.0 GLOBAL INC  
730 E MARKET ST #120  
WEST CHESTER PA 19382**

**Appeal Number: 05A-UI-12082-DT  
OC: 01/09/05 R: 02  
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, 4<sup>th</sup> 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 – Availability for Work  
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Philip E. Hayes (claimant) appealed a representative's November 22, 2005 decision (reference 08) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with People 2.0 Global, Inc (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2005. The claimant participated in the hearing. Carmen Manning 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.

#### FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments through the employer on February 14, 2005. His most recent assignment began on October 20, 2005. As of the hearing, his most recent day on the assignment was December 9, 2005. In that assignment, he has worked as a general laborer in what was to be a full time position at the rate of \$8.05 per hour. At least four of the weeks between October 20 and December 9 were less than 40 hours due to lack of work at the business client.

The claimant established an unemployment insurance benefit year effective January 9, 2005. His weekly benefit amount was calculated to be \$119.00. His current base period is October 1, 2003 through September 30, 2004. His high quarter of the base period was the fourth quarter 2004, and based upon that quarter the claimant's average weekly wage was determined to be \$210.65. His primary employment during that quarter was working full time, 40 hours or more per week, at an hourly wage of \$8.50. That employment ended in December 2004 when the claimant left to take another position that was 40 hours per week at \$9.00 per hour. That employment ended on or about January 7, 2005, prompting the claimant to file his claim. He filed weekly claims regularly thereafter receiving partial unemployment insurance benefits for weeks he worked less than 40 hours and earned less than \$134.00 (\$119.00 plus \$15.00) in other employment, including other temporary assignments through this employer. He ceased filing weekly claims for a period of time beginning in late August 2005 because he was working enough hours and earning in excess of \$134.00.

When the assignment he began October 20, 2005 began providing less than 40 hours of work, he filed an additional claim effective October 30, 2005. He filed weekly claims for the weeks ending November 5, November 19, and November 26, 2005; he reported wages earned for each of those weeks in the amounts of \$184.00 (22.86 hours), \$0.00, and \$105.00 (13.04 hours), respectively. The hours were less than 40 hours those weeks due to lack of work both with the business client and otherwise with the employer. The claimant routinely continues to seek other full time work, including additional temporary assignments during weeks that the business client has insufficient work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment.

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:

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.

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

The Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). The Agency, however, relied on 871 IAC 24.23(21) in denying benefits to the claimant.

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In the present case, the claimant was working 40 or more hours per week during the base period for his prior employer. This establishes the claimant's "regular workweek" for determining whether he was partially unemployed under the statutes and rules. The claimant had weeks since filing his additional claim in which he worked less than the regular full-time hours he had been working for his prior employer during his base period and in which he earned less than \$134.00. The claimant continues to be available for other work and is actively seeking other employment despite his working for the employer. He meets the definition of partially unemployed and is available for work as required by law. He is qualified to receive unemployment insurance benefits in weeks in which he works less than 40 hours and has earnings less than \$134.00.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The employer did not employ the claimant during his base period, and therefore its account is not currently chargeable for benefits paid to the claimant.

#### DECISION:

The unemployment insurance decision dated November 22, 2005 (reference 08) is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance benefits effective October 30, 2005, in weeks in which he works less than 40 hours and has earnings of less than \$134.00. The employer's account is not subject to charge in the current benefit year.

ld/kjw