

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MAYO KAKAL
Claimant

APPEAL NO. 16A-UI-07068-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES COLD STORAGE CO INC
Employer

OC: 01/10/16
Claimant: Respondent (2-R)

Section 96.19-38-a & b – Total and Partial Unemployment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 20, 2016, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 14, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Sandy Trimnell, Controller, participated in the hearing on behalf of the employer.

ISSUE:

Whether the claimant is partially unemployed and the employer is relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a day laborer for Des Moines Cold Storage Company December 7, 2015. Laborers show up to their location every day and the employer assigns them work. The employer has work every day. The claimant worked in January 2016 and earned \$200.00 at the rate of \$7.25 per hour. He then did not report for assignment again until May 13, 2016, at which time he worked that day as well as June 10, 11, 13 and 21, 2016. He has not reported for assignment since June 21, 2016. He does not have any other wages in the base period history.

The issue of whether the claimant is overpaid benefits has not been adjudicated by the Claims Section and is remanded to the Claims Section for an initial interview and adjudication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is relieved of benefit charges.

Iowa Code § 96.19(38) 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.

The claimant was hired as a day laborer. He has not reported for an assignment since June 21, 2016. His hours and wages have not changed from the original contract of hire and the employer continues to have work available. The claimant is not eligible to receive benefits based on his part-time employment with this employer and does not have any other wages in his base period.

The issue of whether the claimant is overpaid benefits is remanded to the Claims Section for an initial interview and adjudication.

DECISION:

The representative's June 20, 2016, decision (reference 06) is reversed. The claimant is not partially unemployed as he has not reported for work since June 21, 2016. Benefits are denied until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant is overpaid benefits is remanded to the Claims Section for an initial interview and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs