IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANTHONY O JACKMON
Claimant

APPEAL NO: 11A-UI-04227-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAHL'S FOODS / FOODS INC
Employer

OC: 02/26/11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Anthony O. Jackmon (claimant) appealed a representative's March 28, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Dahl's Foods / Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. 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.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on or about October 30, 2009. He worked and as of the date of the hearing continues to work part time. Originally he worked in the deli/kitchen about two six hour evening shifts per week plus additional shifts filling in for other employees who were absent, so he was averaging about 22.45 hours per week.

Beginning January 25 the claimant was not scheduled for any more hours. A new manager had come into the deli, and the claimant had a conversation with the manager in which he offered to work extra hours if needed. The manager subsequently indicated that she had thought he had meant he no longer wished to work a regular schedule and only wanted to work on an on-call status. While the claimant continually contacted the employer about getting back on the schedule and getting some hours, he was not returned to a regular work schedule until about March 21. He was then switched to a front bagging position, and since then he has been scheduled for about three shifts per week, getting in about 20 hours.

The claimant established an unemployment insurance benefit year effective February 6, 2011. His weekly benefit amount was calculated to be $119.00. He filed weekly claims seeking unemployment insurance benefits for the weeks between February 6 and March 19 in which he received no wages from the employer because he was given no hours.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits 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 § 96.19-38-b.

871 IAC 24.23(26) provides:

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

> (26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Beginning on or about January 25, the employer was not providing the claimant with substantially the same employment as it provided during his base period. Consequently, the claimant is qualified to receive full or partial unemployment insurance benefits upon the filing of his claim effective February 6 through March 19, 2011, provided he was otherwise eligible.

DECISION:

The unemployment insurance decision dated March 28, 2011 (reference 01) is reversed. The claimant is eligible for full or partial unemployment insurance benefits for the period of February 6 through March 19, 2011.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/css