

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOFFA P LAWSON
Claimant

APPEAL NO: 11A-UI-14997-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR WORLD OF IOWA
Employer

**OC: 10/09/11
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 9, 2011 determination (reference 02) that held him ineligible to receive benefits as of October 9, 2011, since he was not unemployed and was working enough hours for the employer that he was not available to work in the labor market. The claimant participated in the hearing. Kara Smith appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is eligible to receive benefits for weeks in which he earns gross wages of less than \$218.

ISSUE:

Is the claimant eligible to receive benefits when he earns less than \$218 a week?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant registered to work for the employer. The claimant accepted a job assignment at CCB Packaging. This job began in September 2010. When the claimant accepted the job, the employer told him he was only guaranteed eight hours of work a week. Also, if the claimant worked less than 40 hours, his hourly wage would be reduced. The claimant works as many hours as the client has work for him to do.

Since the claimant does not want to work less than 40 hours a week, he has talked to the employer about transferring him to another assignment. The employer has offered the claimant other jobs, but he has not accepted them because his current assignment is better.

In September 2011, the claimant worked 56 hours the week ending September 3. The week ending September 10, he received eight hours of holiday pay and he worked eight hours. The claimant worked 24 hours the week ending September 24, 44 hours the week ending September 24, and 40 hours the week ending October 1. For the weeks ending October 15 through November 5, the claimant reported gross wages of \$320. For the week ending November 19, he reported gross wages of \$60. Since November 20, the claimant has earned gross wages of \$364 or more a week.

The claimant established a claim for benefits during the week of October 9, 2011. His maximum weekly benefits amount is \$203.

REASONING AND CONCLUSIONS OF LAW:

When the claimant established his claim for benefits, he was not unemployed or eligible to receive benefits, because he earned more than \$218 that week and for several subsequent weeks. 871 IAC 24.18. Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). This means the claimant's eligibility to receive benefits must be examined or reviewed each week he files a claim for benefits.

Even though the employer only guaranteed the claimant eight hours of work a week, the claimant usually works more than eight hours. The administrative record shows his average weekly wage in his high quarter is \$359.34. This is based on wages the claimant earned while working for the employer from October 1 through December 31, 2010. The only week the claimant has earned less than \$218 (gross wages) is the week ending November 19. During this week, the claimant is eligible to receive partial benefits.

While the claimant asserted he should receive benefits because the employer continues to reduce his hours and he should receive benefits for all the hours the employer has shorted him, unemployment insurance benefits do not work this way. Instead, the claimant's eligibility to receive benefits on a weekly basis must be examined while he continues to work for the employer now that he has an established a benefit year the week of October 9, 2011. If the claimant's employment with the employer ends, the Department would then examine the reasons for this separation to determine if the separation was for disqualifying or nondisqualifying reasons. If the claimant's current employment ends, he may not be qualified to receive benefits based on the reasons for the employment separation.

DECISION:

The representative's November 9, 2011 determination (reference 02) is modified in the claimant's favor. While the claimant was not eligible to receive benefits when he initially established his claim because he had excessive earning, more than \$218 a week, he is eligible to receive partial benefits when he earns gross wages of less than \$218 a week. The claimant is eligible to receive partial benefits for the week ending November 19, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw