

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KURT W CONKLIN**

Claimant

**APPEAL NO. 13A-UI-13452-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDERS SALES & SERVICE COMPANY**

Employer

**OC: 03/24/13**

**Claimant: Appellant (4-R)**

Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 27, 2013, reference 01, that concluded he was working excess hours and could not be considered able to and available for work. A telephone hearing was held on December 18, 2013, with the agreement of the parties to advance the hearing from its scheduled date of December 31, 2013. The claimant participated in the hearing. Gail Dunahoo participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 24, 2013, after he was laid off from Allied Construction. His weekly benefit amount was determined to be \$396.

The claimant worked for the employer from October 2, 2013, to November 8, 2013, when he was informed that he was going to be laid off.

The claimant filed an additional claim for unemployment insurance benefits effective November 10, 2013. On November 12, the claimant's supervisor called the claimant and said they had some work starting the next day that would last through the weekend. The claimant accepted the additional work.

The claimant worked and earned \$862.42 from November 13 through November 16. He properly reported his wages on his weekly claim for the week ending November 16 and was not paid any benefits for that week. He worked and earned \$250.28 on November 17. He did not report any wages for that week, but the claim was denied due to the decision that he was working excessive wages. After November 17, the claimant was temporarily laid off until work starts up again for the employer. The claimant is able to and available for work.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The rules provide that a claimant is disqualified for being unavailable for work if: "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." 871 IAC 24.23(23). The unemployment insurance rules provide that a claimant is not eligible for benefits for any week in which his earning exceed his weekly benefits plus \$15. 871 IAC 24.18.

The claimant was ineligible for benefits for the week ending November 16, 2013, because his earnings for the week were over his earnings limit of \$411. His claim, however, should not have been locked at that time because he remained available for work and was called in during the week to work some additional hours after he thought he was going to be laid off.

The claimant would also be eligible for partial benefits for the week ending November 23 reduced by the \$250.28 in wages he earned on November 17, 2013. The matter of calculating and paying the partial unemployment insurance benefits owed to the claimant is remanded to the agency.

**DECISION:**

The unemployment insurance decision dated November 27, 2013, reference 01, is modified in favor of the claimant. The claimant was able to and available for work and his claim should be unlocked effective November 17, 2013. The matter of calculating and paying the partial unemployment insurance benefits owed to the claimant for the week ending November 23, 2013, is remanded to the agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs