

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GILBERTO GONZALEZ ZARATE
Claimant

APPEAL NO. 11O-UI-07126-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNA ENTERPRISES
Employer

OC: 01/16/11
Claimant: Respondent (4)

Section 96.4-3 - Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 2, 2011, reference 02, that concluded the claimant was on a short-term leave. A telephone hearing was held on July 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kate Druivenga participated in the hearing on behalf of the employer.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant started working for the employer on temporary assignments in May 2010. From August 3, 2010, to February 17, 2011, the claimant worked on an assignment at CSC Corporation.

The job at CSC Corporation involved constructing and folding boxes for a mailing facility. The claimant was informed and understood at the time of hire that work would be available when the client's shipment of boxes came in and the work available would vary from week to week. This in fact happened throughout the time the claimant worked on the assignment at CSC Corporation with the days of work varying from five eight-hour days to one day per week. His rate of pay was a base rate of \$11.70 per hour plus health and wellness pay of \$3.24 per hour, for a total of \$14.94 per hour.

The claimant filed new claim for unemployment insurance benefits effective January 16, 2011, after hearing from coworkers that there might be a layoff. His weekly benefit amount was determined to be \$292 (his weekly earnings limit would be \$307).

The claimant worked 22 hours and earned \$328 for the week ending January 22. He worked 37 hours and earned \$552 for the week ending January 29. He worked eight hours and earned \$119 for the week ending February 5. He worked 40 hours and earned \$597 for the week ending February 12. During his last week of work at CSC Corporation, he worked 24 hours and earned \$358 for the week ending February 19. The claimant properly reported his wages for these weeks and received partial unemployment insurance benefits for the week ending February 5 of \$246. In all the other weeks, his wages exceed the earnings limit and he received no benefits.

The claimant completed the temporary work assignment on February 17. When the claimant was hired, he was notified that he needed to contact the employer within three working days after the completion of a job assignment and request a new assignment. The claimant waited until February 24 to contact the employer indicating that he was available again. He did not work during the week ending February 26.

The employer treated the claimant as an employee despite his failure to promptly contact the employer after the CSC assignment ended and sent him on a one-day temporary work assignment during the week ending March 5. He properly reported his earning of \$72 for the week and was paid \$292 in benefits. The claimant did not work during the week ending March 12. The next time the employer had work available for the claimant again was the week ending March 19 when he worked 36 hours at a rate of pay of \$8 per hour. He properly reported \$288 in wages and received \$77 in benefits for the week. The employer did not have any work for the claimant during the weeks ending March 26, April 2, and April 9.

The claimant started a new temporary work assignment on April 12 at United Brick. His rate of pay was \$9.50 per hour. The claimant filed weekly claims for eight weeks from the week ending April 16 through June 4. There was only one week—the week ending May 7—where the claimant's wages (\$285) did not exceed his earning limit. He worked 30 hours that week.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits effective January 16, 2011. He is requesting unemployment insurance benefits for the weeks in which his earnings were less than the weekly benefit amount.

Iowa Code § 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 § 96.19-38-b provides in part:

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.

The unemployment rules provide that 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. 871 IAC 24.23(26).

Based on the evidence presented in this case, the claimant would not be qualified for partial benefits based on 871 IAC 24.23(26) during the week ending February 5 because he was working the same hours and wages as when he started and during his base period, which varied from week to week depending on availability of work at CSC. I conclude, however, that this rule cannot be applied to the partial unemployment weeks of March 5, March 19, and May 7 because the claimant's wages were not the same during those weeks as his wages when he was working at CSC Corporation. In addition, the partial unemployment weeks of March 5 and March 19 were really spot job or casual labor that should be treated differently than the long-term assignment at CSC Corporation. See 871 IAC 24.26(19) (claimant who complete spot jobs or casual labor are qualified for benefits).

In addition, I conclude, that the claimant was entitled to benefits during the weeks where he was totally unemployed because the rule cited above would not apply since the claimant was not partially unemployed during those weeks. The claimant is qualified for the weeks ending March 12, March 26, April 2, and April 9.

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. I conclude the claimant is not subject to disqualification under Iowa Code § 96.5-1-j because the employer did not treat the claimant as having quit and continued to provide work for him.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The employer's account is not subject to charge for benefits for the week ending February 5 but is subject to charge for the benefits paid afterward.

DECISION:

The unemployment insurance decision dated March 2, 2011, reference 02, is modified. The claimant is qualified to receive unemployment insurance benefits except for the week ending February 5, 2011. The employer's account will be subject to charge for benefit paid to the claimant except for the week ending February 5, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs