

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SANTOS RAMOS

Claimant

APPEAL NO. 19A-UI-07487-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP

Employer

OC: 08/11/19

Claimant: Respondent (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 11, 2019, reference 01, decision that allowed benefits to the claimant effective August 11, 2019 provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, and partially unemployed. After due notice was issued, a hearing was held on October 15, 2019. Claimant Santos Ramos participated. Bobbi Bures represented the employer. Spanish-English interpreter Hardy Rosario of CTS Language Link assisted with the hearing. Exhibits 5 through 8 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant was able to work and available for work during the four weeks between August 11, 2019 and September 7, 2019.

Whether claimant was partially unemployed during the four weeks between August 11, 2019 and September 7, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Santos Ramos is employed by Smithfield Fresh Meats Corporation on a full-time basis. Mr. Ramos' base wage is \$13.55 per hour. Mr. Ramos receives an additional 50 cents per hour as a shift-differential wage for working the second shift. Mr. Ramos' usual work hours are from 2:35 p.m. until 10:30 to 11:30 p.m., Monday through Friday. Mr. Ramos is also required to perform Saturday work as needed.

Mr. Ramos established an original claim for unemployment insurance benefits that was effective August 11, 2019. Iowa Workforce Development set Mr. Ramos' weekly benefit amount at \$401.00. Smithfield is the sole base period employer in connection with the claim. Mr. Ramos made weekly claims for the weeks that ended August 17, 24 and 31 and September 7, 2019.

Mr. Ramos then discontinued his claim for benefits. Mr. Ramos was physically and mentally able to work during each claim week. For each week, Mr. Ramos reported wages that were less than his weekly benefit amount and received partial unemployment insurance benefits as follows:

<u>Week End Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
8/17/19	283	218
8/24/19	391	110
8/31/19	399	102
9/7/19	399	102

During the week that ended August 17, 2019, the employer had full-time hours available for Mr. Ramos, but Mr. Ramos did not work all of the hours the employer had for him. Mr. Ramos worked his shifts on Tuesday, Wednesday and Thursday. Mr. Ramos' total work hours for those three days were 22.68 hours. His wages for those three work days totaled \$318.65. Mr. Ramos had requested and received Monday, August 12 off as a paid vacation day, for which the employer paid him \$108.40 in vacation pay benefits. Mr. Ramos had also requested and received Friday, August 16, 2019 off as an unpaid vacation day. Mr. Ramos' total wages for the week were \$427.05.

During the week that ended August 24, 2019, Mr. Ramos was available to perform full-time work, but the employer did not have full-time work available for him. The employer did not have work for Mr. Ramos on Monday, August 19, 2019 and Mr. Ramos received no wages for that day. The employer had full shifts available for Mr. Ramos on Tuesday through Friday. Mr. Ramos worked each of those shifts and the work hours totaled 29.40 hours. His total wages for the week were \$413.07.

During the week that ended August 31, 2019, the employer had full-time hours available for Mr. Ramos, but Mr. Ramos did not work all the hours the employer had available for him. Mr. Ramos worked his scheduled shifts on Monday through Thursday. His work hours totaled 30.7. His wages for those work days totaled \$431.34. Mr. Ramos requested and received Friday, August 30, 2019 off as a vacation day, for which the employer paid Mr. Ramos \$108.40. Mr. Ramos total wages for the week were \$539.00.

During the week that ended September 7, 2019, Mr. Ramos was available for full-time work, but the employer did not have full-time work for him. Monday, September 2, was Labor Day. The employer gave Mr. Ramos that day off and paid him \$108.40 in holiday pay for that day. The employer did not have work for Mr. Ramos on Tuesday, September 3, 2019 and did not pay any wages to Mr. Ramos for that day. Mr. Ramos worked the shifts the employer had available for him on Wednesday, Thursday and Friday. The work hours for those three days totaled 23.67 and the wages for those days totaled \$344.40. The combined wages and holiday pay totaled \$452.80.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially

unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Admin. Code r. 871-24.13(2)(a) provides:

(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's

weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended 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.

(a) 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The weight of the evidence establishes that Mr. Ramos was able to work and available for work within the meaning of the law during each of the four claim weeks. Mr. Ramos demonstrated his availability by working for the employer during the majority of the week or the entire week.

The evidence establishes that Mr. Ramos was partially unemployed during only one of the four weeks of the claim. Mr. Ramos was partially unemployed during the week that ended August 24, 2019, when the employer had only 29.40 hours of work for Mr. Ramos and his total weekly wages for the week were only \$413.07. Mr. Ramos is eligible for partial benefits for that week provided he meets all other eligibility requirements. The employer's account may be charged for the benefits paid for that week. The correct benefit amount that week can be determined by subtracting from the \$401.00 weekly benefit amount that portion of Mr. Ramos' weekly wages that exceeded one-fourth of the weekly benefit amount. One-fourth of the \$401.00 weekly benefit amount was \$100.00 (rounded). $\$413.00 \text{ (rounded)} - \$100.00 = \$313.00$. Thus the appropriate partial benefits for the week that ended is $\$401.00 - \$313.00 = \$88.00$. That \$88.00 figure is \$22.00 less than the \$110.00 in benefits that Mr. Ramos received for that week.

Mr. Ramos was not partially unemployed during the weeks that ended August 17, August 31, or September 7, 2019 because his total wages for each of those weeks exceeded his weekly benefits amount (\$401.00) by more than \$15.00. Mr. Ramos is not eligible benefits under a theory of partial unemployment for the weeks that ended August 17, August 31 and September 7, 2019.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision. The overpayment amounts are as follows:

\$218.00 for the week that ended August 17, 2019,
\$22.00 for the week that ended August 24, 2019,
\$102.00 for the week that ended August 31, 2019, and
\$102.00 for the week that ended September 7, 2019.

The total overpayment amount for the four-week period is \$444.00.

DECISION:

The September 11, 2019, reference 01, decision is modified as follows. The claimant was able to work and available for work during each of the four weeks between August 11, 2019 and September 7, 2019. The claimant was partially unemployed during the week that ended August 24, 2019 and was eligible for \$88.00 in partial unemployment insurance benefits for that week provided he met all other eligibility requirements. The employer's account may be assessed for benefits for the week that ended August 24, 2019. The claimant was not partially unemployed during the weeks that ended August 17, August 31, and September 7, 2019 and is not eligible for benefits for those three weeks under a theory of partial unemployment.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision. The overpayment amounts are as follows:

\$218.00 for the week that ended August 17, 2019,
\$22.00 for the week that ended August 24, 2019,
\$102.00 for the week that ended August 31, 2019, and
\$102.00 for the week that ended September 7, 2019.

The total overpayment amount for the four-week period is \$444.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn