

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALIVONTA D TURNER
Claimant

APPEAL NO. 14A-UI-02579-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERNS MOVING INC
Employer

OC: 02/02/14
Claimant: Respondent (1-R)

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 February 27, 2014, reference 03, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since his hours had been reduced. A telephone hearing was held on March 31, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kyle Junk participated in the hearing on behalf of the employer with a witness, Nathan Berns. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Is the claimant eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked 35-40 hours per week, for the employer as a mover from April 2013, through January 2014. His rate of pay was \$11 per hour.

In January 2014, the claimant was late for work on January 19, 23, 24, and 30, 2014. As a result, the employer reduced the claimant's hours.

As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance effective February 2, 2014. His weekly benefit amount was determined to be \$212 per week.

The claimant's wages starting in February were \$50 for the week ending February 8, \$30 for the week ending February 15, \$200 for the week ending February 22, and \$200 for the week ending March 1, 2014.

The claimant's employment ended on February 28, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective February 2, 2014. The claimant filed a claim requesting partial 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 preponderance of the evidence establishes the claimant's regular workweek at the point he filed his new claim was 40 hours per week. He was working less than that regular workweek due to a reduction in hours effective February 2, 2014, and he was entitled to partial unemployment insurance benefits since his earnings were less than his weekly benefit amount plus \$15.00 from February 2 through March 1, 2014. There is nothing in the statutes or rules that disqualifies a claimant when a reduction in hours is due to tardiness.

The next issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3. There is no evidence that the claimant was not available for full-time work during the period in question.

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 subject to charge for benefits because the employer did not provide the claimant with the same full-time employment as provided during the base period.

During the hearing, it was discovered that the claimant had been discharged on February 28, 2014. The claimant would not agree to allow me to adjudicate this separation. Since it was not listed as an issue on the hearing notice, the matter is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 27, 2014, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account will be subject to charge for its share of benefits paid to the claimant. The issue of whether the claimant is disqualified to receive unemployment insurance benefits based on the reasons for his separation from work is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs