

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS C ROBBINS
Claimant

APPEAL NO. 08A-UI-07165-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSIC LOFT INC
Employer

OC: 07/06/08 R: 04
Claimant: Appellant (2)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Active Search for Work

STATEMENT OF THE CASE:

Douglas C. Robbins (claimant) appealed a representative's July 30, 2008 decision (reference 01) that concluded he was required to actively search for work because he was no longer temporarily unemployed in relation to Music Loft, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2008. The claimant participated in the hearing. The employer contacted the Appeals Section prior to the hearing, and after ascertaining that the hearing was actually on the claimant's appeal of the work search issue, indicated that it did not wish to participate in the hearing. Additionally, the employer provided a written statement on August 13, 2008 which the administrative law judge concluded was to be in lieu of the employer's participation in the hearing; that statement was admitted to the record as Employer's Exhibit One. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant required to perform an active work search? Was the claimant partially unemployed and eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2005. He typically had worked full time between 36 and 40 hours, usually from 10:00 a.m. to 7:00 p.m. on Monday, Tuesday, and Thursday, and 10:00 a.m. to 5:00 p.m. on either Wednesday and Friday or Wednesday and Saturday. While there was a subsequent slight modification to this schedule in about February 2008, the claimant's high quarter wages during his base period was earned on this basis.

The employer had two music instrument and supply stores in Cedar Rapids, but one of the stores was lost in the city's flooding in June 2008. While the claimant worked at the other store location, the overall impact on the employer's business was such that on July 3 the employer

informed the claimant that as of July 7 his hours were being reduced to 12:00 p.m. to 5:00 p.m., Monday through Friday, so approximately to 25 hours per week.

As a result of this reduction in hours, the claimant established an unemployment insurance benefit year effective July 6, 2008. His weekly benefit amount was calculated to be \$321.00. He filed weekly claims for which he reported his weekly wages as earned and for which he was paid partial benefits based upon the statutory formula. As of August 18 his hours were increased slightly to about 30 to 34 hours per week.

When the claimant established his claim for benefits, his claim was categorized as being due to being "temporarily" unemployed rather than "partially" unemployed.

REASONING AND CONCLUSIONS OF LAW:

The first question in this case is whether the claimant was "partially unemployed" and therefore eligible for partial unemployment insurance benefits.

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Under the first definition under paragraph "b," the claimant did have weeks in which he worked less than his regular full-time week and in which he earned less than the individual's weekly benefit amount plus fifteen dollars. For those weeks the claimant is therefore eligible to receive partial benefits calculated under the statutory formula.

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.

The next question is whether the claimant is subject to the requirement to conduct an active search for work. Iowa Code § 96.4-3 and 871 IAC 24.22(3) in general provide that a claimant must make a weekly personal and diligent effort to find a job in order to be eligible for weekly claims. When the claimant's claim was categorized, it was categorized as "temporary" unemployed under Iowa Code § 96.19-38-c, rather than "partially" unemployed under Iowa Code § 96.19-38-b. A person who is "temporarily" unemployed is generally only exempt from the requirement to make a search for work for about four weeks, after which the person is deemed "permanently" unemployed and required to begin a search for new employment. Since the claimant's claim was miscategorized as due to "temporary" unemployment rather than "partial" unemployment, after passage of about four weeks the Agency imposed the work search restriction as stated in the representative's decision.

However, there is no such time limit applied to persons who are "partially" unemployed. Under Iowa Code § 96.4-3, the normal weekly work search requirement 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." This is precisely the claimant's situation. He is not subject to the work search requirement under his current circumstances.

DECISION:

The unemployment insurance decision dated July 30, 2008 (reference 01) is reversed. The claimant is eligible for partial unemployment insurance benefits, provided he is otherwise eligible. The claimant is currently exempt from the requirement to perform an active search for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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