

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL SIMPSON
Claimant

APPEAL NO: 12A-UI-04833-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMAND CENTER INC
Employer

OC: 01/01/12
Claimant: Appellant (2)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Michael Simpson (claimant) appealed a representative's April 20, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Command Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2012. The claimant participated in the hearing. Daniel Aguilera appeared on the employer's behalf. 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.

FINDINGS OF FACT:

The employer is a temporary employment firm, including longer-term assignments and day labor assignments. The claimant began taking work with the employer on August 4, 2011, after a separation from his prior full-time employer, Builders Supply Company, a Nebraska employer, in July 2011. The claimant established an unemployment insurance benefit year effective January 1, 2012. His weekly benefit amount was calculated to be \$385.00. The wage credits from Builders Supply Company are still within the claimant's current base period, as are the third quarter 2011 wages from this employer.

While the claimant primarily requested banquet serving positions, he did work a longer-term assignment, for about two and a half months, doing construction work from about September through October. Since then, he has only worked as a banquet server, working on about nine assignments since the first of the year. There have been weeks since January 1, 2012 for which the employer provided no work for the claimant. The employer asserted that there have been 17 occasions where the claimant declined banquet serving work; however, the claimant testified there were only about two banquet server assignments he declined because of being called with too short of notice. The remaining occasions, the employer did not establish that there was actual communication to the claimant and an actual refusal of work, as compared to unsuccessful attempts by the employer to reach the claimant.

The claimant continues to seek full-time employment; he has filed a claim for unemployment insurance benefits seeking at least partial unemployment insurance benefits while he continues to work as needed for the employer and until he obtains other employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed if he has been permanently or temporarily separated from one employer and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

The claimant was separated from his regular full-time employer and works on an as-needed basis for this current employer. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective January 1, 2012, provided he was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a, the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same employment it provided during the base-period. Since January 1, 2012, it has not provided him with the same level of employment that it provided in the third quarter 2011.

DECISION:

The unemployment insurance decision dated April 20, 2012 (reference 01) is reversed. The claimant is eligible for partial unemployment insurance benefits, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw