

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R BARKER
Claimant

APPEAL NO: 10A-UI-02211-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCO ENGINEERING CORP
Employer

OC: 12/20/09
Claimant: Appellant (2-R)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 26, 2010 reference 01, that held he was not eligible for benefits effective December 20, 2009, as he was still employed as the same hours and wages. A telephone hearing was held on April 6, 2010. The claimant participated. Robert Ruark, President, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant is able and available for work.

Whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began part-time shop work for his employer of three days a week, eight hour days, on October 3, 2008. The department record shows that no other employer reported paying wages to the claimant during the calendar year 2009. The employer reported paying taxable wages for the claimant during 2009, as follows: 1st quarter - \$102; 2nd quarter - \$445; 3rd quarter - \$752; and, fourth quarter - \$224. The employer exhibit records the hours worked for the claimant during 2009, as follows: 1st quarter – 4.5 hours; 2nd quarter – 46.5 hours; 3rd quarter – 82.5 hours; and, fourth quarter – 49 hours.

The claimant filed an unemployment claim in December, because his part-time hours had been reduced due to moving from the shop to snow removal. The claimant separated from employment after last working on January 26, 2010.

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 Code section 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.

The administrative law judge concludes that the claimant was partially unemployed due to a reduction in his part-time hours, and is eligible for benefits effective December 20, 2009.

The employer's wages paid to the claimant record and employer, hours-worked record establish that the claimant's part-time work had been reduced by the employer in the fourth quarter of 2009. The claimant had worked 82.5 hours in the third quarter of 2009 with reported earnings of \$752 that was reduced in the fourth quarter to 49 hours and \$224 in earnings. The work hour reduction was due to the employer moving the claimant from the shop to snow removal. The record does not show as the employer contended the claimant was doing part-time work for some other employer, and the claimant was available to work the hours he could for the employer.

The administrative law judge further concludes the claimant's separation from employment on January 26, 2010 is remanded to claims for fact-finding.

DECISION:

The department decision dated January 26, 2010 reference 01, is reversed. The claimant is eligible for benefits effective December 20, 2009, as he was partially unemployed, and able and available for work. The employment separation of January 26, 2010 is remanded to claims for a fact-finding investigation.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs