

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILBER RENDEROS
Claimant

APPEAL NO: 15A-UI-12283-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 08/23/15
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2015, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2015. The claimant participated in the hearing with certified Interpreter Jimena. Lindy Helm, Human Resources Specialist, participated in the hearing on behalf of the employer.

ISSUE:

The issues are whether the claimant is able and available for work and whether he is still employed at the same hours and wages.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time employee for West Liberty Foods October 14, 2013. The employer considers full-time as 32 hours and above.

The claimant worked: 25.72 hours from September 28 through October 4, 2015; 45.26 hours from October 5 through October 11, 2015; 38.00 hours from October 12 through October 18, 2015; 37.73 hours from October 19 through October 25, 2015; 47.72 hours from October 26 through November 1, 2015; 36.45 hours from November 2 through November 8, 2015; 47.10 hours from November 9 through November 15, 2015; and 17.02 hours from November 16 through November 20, 2015. During the weeks the claimant worked less than 40 hours it was attributable to a lack of work on the part of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work and has not been working the same hours for the wages every week since September 27, 2015.

Iowa Code § 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".

Whether the claimant is able and available for work and working the same hours is a week to week determination. Therefore, he could be ineligible one week but eligible the next. There have been five weeks since September 27, 2015, when the claimant has not worked 40 hours. During each week the claimant worked less than 40 hours per week, and made less than his weekly benefit amount of \$430.00, and meets all of the other eligibility requirements, he is eligible for benefits, less the wages he earned during those weeks. Accordingly, benefits are allowed for the weeks the claimant reported less than 40 hours per week and less than \$430.00 in wages.

DECISION:

The October 27, 2015, reference 03, decision is modified in favor of the claimant. The claimant is able to work and available for work effective September 27, 2015. Benefits are allowed for the weeks the claimant reported less than 40 hours per week and less than \$430.00 per week, which is his weekly benefit amount.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs