

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK F KLOSER
Claimant

APPEAL NO. 11A-UI-13122-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 07/24/11
Claimant: Appellant (4)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 3, 2011, reference 05, that concluded he was working enough hours to be considered employed. A telephone hearing was held on October 27, 2011. The parties were properly notified about the hearing. The claimant did not participate in the hearing. Sarah Fiedler participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from June 11, 2011, to September 23, 2011.

The claimant's last assignment was working as a production worker at Allsteel. He worked there for two weeks. During the week ending September 17, he worked 40 hours at a rate of pay of \$9.25 per hour and earned wages of \$370.00. During the week ending September 24, he worked 38.8 hours and earned wages of \$359.00. His assignment at Allsteel ended on September 23. He contacted the employer within three days after that assignment ended and has contacted the employer regularly since, but the employer has not had any additional work for him.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 24, 2011. His weekly benefit amount was determined to \$385.00, based on full-time employment with the Muscatine Community School District. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The Agency made its decision based on 871 IAC 24.23(23), which provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Since the claimant's assignment ended on September 23 any disqualification based on 871 IAC 24.23(23) would also end. The claimant has been able to and available for work.

The question is whether the claimant is entitled to partial benefits for the week ending September 17 when he worked 40 hours and his wages were \$370.00 and for the week ending September 24 when the claimant worked 38.8 hours and earned wages of \$359.00.

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.

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.

I conclude that the claimant is not eligible for partial unemployment insurance benefits for the week ending September 17 because he was working full time. I conclude he was eligible for benefits for the week ending September 24 because he worked less than the full-time and his earnings were less than his weekly benefit amount plus \$15.00.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges to the employer's account will be decided based on the circumstances at that time.

DECISION:

The unemployment insurance decision dated October 3, 2011, reference 05, is modified in favor of the claimant. The claimant is not eligible for benefits for the week ending September 17, but was eligible for benefits for the week ending September 24. The disqualification for being unavailable for work should be lifted effective September 18, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs