

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN J HALL**  
Claimant

**APPEAL NO: 10A-UI-04285-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 01/17/10  
Claimant: Appellant (1)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Justin J. Hall (claimant) appealed a representative's March 10, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Pella Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2010. The claimant participated in the hearing. Diane Carpenter appeared on the employer's behalf and presented testimony from one other witness, Kevin Poort. 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.

**ISSUE:**

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 30, 2007. He works full time as a specialist on the second shift. As of the date of the hearing, he continues in that employment.

The claimant sought partial unemployment insurance benefits effective the week beginning January 17, 2010. His weekly benefit amount was calculated to be \$374.00, so he could be eligible for partial benefits for any week in which his earnings were \$389.00 or below. The employer's operation was operating on somewhat less than a 40 hour schedule for a portion of the time following that date. However, for the weeks ending January 23, January 30, February 6, February 13, and February 20, the employer was guaranteeing employees, including the claimant, at least 32 hours of work. Given his weekly wage of \$14.32, for those weeks the claimant could have earned at least \$458.00. However, for those weeks the claimant worked only 21.5, 26.0, 27.25, 26.0, and 0.0 hours. For the week ending February 27 the employer was guaranteeing employees, including the claimant, at least 38 hours; he could have earned at least \$544.00, but he worked only 23.5 hours. Starting with the week ending March 6

through at least the date of the hearing, the employer was once more guaranteeing employees, including the claimant, at least 40 hours per week so he could have earned at least \$572.00, but for at least the weeks in March the claimant was only working 33 to 36 hours.

The reason the claimant was working less hours than were available and guaranteed was that he was volunteering to leave early. He was not being requested to leave early, and his early departure was not in lieu of another employee being sent home early involuntarily. The reason he had no hours the week ending February 20 was that he had taken a personal leave of absence for that week.

#### **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant whose hours worked with his employer have been reduced is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the employee claimant is not willing to work the hours available to him. Rather, he must remain available for work on the same basis as when he was previously working and earning the wage credits on which his unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a).

While there is a provision for a person who volunteers for a layoff to be eligible for unemployment insurance benefits if this is only to preclude another employee from being involuntarily laid off, that is not the case here. 871 IAC 24.26(27). Rather, the reason the claimant's earnings for most of the weeks after January 17 have been below the \$389.00 partial eligibility level is because he has been unwilling to work the number of hours the employer had available to him, and thus has chosen to make himself unavailable for work, and thus ineligible for unemployment insurance benefits. 871 IAC 24.23(29). Further, for the week ending February 20, he made himself completely blocked from working any hours by taking a personal leave of absence, another provision under which he is ineligible to receive unemployment insurance benefits. 871 IAC 24.23(10). Benefits are denied as the claimant was not available on the same basis as when he was working during his base period and was not available to work the hours that the employer was guaranteeing to him.

**DECISION:**

The representative's March 10, 2010 decision (reference 01) is affirmed. The claimant is not eligible for partial unemployment insurance benefits as his lack of wages since January 17, 2010 is due to his lack of availability for work, not the employer's lack of sufficient hours being made available to him.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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