

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J MCGONIGLE
Claimant

DURHAM D & M LLC
Employer

APPEAL NO: 12A-UI-00784-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/12/11
Claimant: Appellant (2)**

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 20, 2012 ,reference 02, that held he is not eligible for benefits effective December 18, 2011, because he is still employed in the same job. A telephone hearing was held on March 1, 2012. The claimant participated. The employer did not participate.

ISSUES:

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began working for the employer on August 1, 2009, as a part-time school bus driver. After filing his June 12, 2011 unemployment claim, he filed an additional claim of November 6. A department representative issued a decision denying him benefits on the same basis as the decision in this matter, and he appealed.

An ALJ issued a decision on January 31, 2012 (Appeal Number 11A-UI-16078-ET) that reversed and allowed benefits as claimant was partially unemployed due to a reduced work-week schedule. Claimant filed an additional claim for the week ending December 24 reporting gross earnings of \$245.00 due to not working a regular schedule that is less than his WBA of \$290.00. He was not scheduled to work the week ending December 31, had no earnings, and is seeking a benefit for this week.

The employer failed to respond to the hearing notice.

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 claimant was able and available for work, and is partially unemployed for any week that he works less than his WBA plus \$15.00 effective December 18, 2011.

Although claimant is a part-time employee, he is eligible for benefits when his hours are substantially reduced from his regular work schedule as long as he is able and available. The decision in this case is consistent with that in Appeal Number 11A-UI-16078-ET.

DECISION:

The department decision dated January 20, 2012, reference 02, is reversed. The claimant is eligible for benefits effective December 18, 2011, as he was able and available for work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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