

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR M CASTILLOMAR
Claimant

APPEAL NO. 11A-UI-01419-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLUMROSE USA INC
Employer

OC: 08/01/10
Claimant: Respondent (4-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 25, 2011, reference 01, that concluded the claimant was ineligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to him since his hours and/or wages had been reduced. A telephone hearing was held on March 8, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Roxanne Rose participated in the hearing on behalf of the employer with a witness, Jaycie Chenoweth.

ISSUES:

Was the claimant eligible for partial unemployment insurance benefits?

Is the employer's account subject to charge for benefits paid?

FINDINGS OF FACT:

The claimant worked full-time for the employer from October 3, 2003, to August 6, 2010. He filed for benefits effective August 2, 2010, because the employer announced that production would be down the week of August 8 to 14, 2010. His weekly benefit amount is \$426.00.

The claimant was temporarily laid off the week ending August 14. The claimant filed for benefits for the week ending August 21. He properly reported wages earned on August 16 of \$100.69. The claimant did not work for the rest of the week. The employer is not certain on what days the employer had work that week. The claimant worked full-time the week ending August 28 and earned \$568.56 but only reported \$100.00 for the week. He was paid \$426.00 in benefits for the week.

The claimant has filed benefits each week since August 28, but except for the week ending October 16, his wages have been over his earnings limit of \$441.00. The claimant worked the week ending October 16. He reported wages of \$440.00 and was paid \$92.00 in benefits for

the week. The employer had full-time work that week and any time the claimant did not work that week was due to the claimant being absent.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective August 8, 2010, and afterward. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which his earnings were less than the weekly benefit amount.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 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.

The claimant was laid off during the week ending August 14 and was properly awarded benefits for that week. For the week ending August 21, the employer contended there was full-time work for the claimant. The employer's witness said the claimant worked on August 16, was absent on August 17, was not scheduled on August 18, and had no information about August 19 and 20. I conclude the evidence is not sufficient to prove the claimant was not entitled to the partial unemployment benefits he received for that week. The claimant underreported his wages for the week ending August 28, 2010, and was not eligible for any benefits for that week because his wages were over his earnings limit.

The final issue in this case is whether the claimant was available for work for the week ending October 16, 2010, as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment rules provide that a claimant who does not work a full-time scheduled workweek for the claimant's regular employer is not available for work. 871 IAC 24.23(29). The claimant's hours were not reduced for the week ending October 16. Any lack of work was due to the claimant being absent. He was not eligible for benefits for that week.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 25, 2011, reference 01, is modified in favor of the employment. The claimant was eligible to receive unemployment insurance benefits for the weeks ending August 14 and 21. He was not eligible for benefits for the weeks ending August 28 or October 16, 2010. He has worked full-time and has not been eligible for benefits since the week ending August 21, 2010. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw