

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A PETERSEN
Claimant

APPEAL NO. 12A-EUCU-00136-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BILLION MOTORS INC
Employer

**OC: 12/26/10
Claimant: Appellant (4)**

Section 96.4-3 – Eligibility for Benefits
Section 96.19-38 – Definition of Unemployed

STATEMENT OF THE CASE:

Scott A. Petersen filed a timely appeal from an unemployment insurance decision dated March 30, 2012, reference 08, that imposed an open ended denial of unemployment insurance benefits effective December 25, 2011. After due notice was issued, a telephone hearing was held April 17, 2012 with Mr. Petersen participating. His former employer Billion Motors, Inc., did not respond to the notice.

ISSUE:

Is the claimant eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

Scott A. Petersen was a full-time employee of Billion Motors, Inc. from December 5, 2011 until February 14, 2012. His separation from employment was not a disqualifying event. During his employment, Mr. Petersen worked an average of 43 hours per week and was paid on commission. He has been unemployed since February 15, 2012.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is eligible to receive unemployment insurance benefits. From the evidence in the record the administrative law judge concludes that he is eligible to receive unemployment insurance benefits beginning with the week of February 12, 2012.

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".

An individual must be unemployed in order to receive unemployment insurance benefits. See Iowa Code section 96.19-38. An individual is considered totally unemployed if the individual in a given week performs no services for an employer and earns no wages. An individual is partially unemployed for a given week if the individual works fewer than his regular full-time hours and earns less than the sum of his or her weekly benefit amount plus \$15.00. Mr. Petersen testified that while he made little money in commissions, he worked 40 or more hours per week from December 5, 2011 through the end of his employment. From this, the administrative law judge concludes that Mr. Petersen is ineligible for unemployment insurance benefits from his additional claim date, December 25, 2011 through February 11, 2012 because of the number of hours he worked. He eligible to receive unemployment insurance benefits, however, beginning February 12, 2012.

DECISION:

The unemployment insurance decision dated March 30, 2012, reference 08, is modified. The claimant is ineligible to receive unemployment insurance benefits from December 25, 2011 through February 11, 2012. He is entitled to receive unemployment insurance benefits thereafter, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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