

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M ENGLE

Claimant

MATCO RESTAURANTS INC

Employer

APPEAL NO. 11A-UI-11780-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/11

Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
Section 96.7-2-a – Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 1, 2011, reference 01, that held the claimant was eligible for benefits as a part-time employee effective July 17, 2011, and the employer was denied a relief of charges. A telephone hearing was held on September 29, 2011. The claimant did not participate. Shawn Scholl, GM, participated for the employer.

ISSUES:

Whether the claimant is able and available for work.

Whether the claimant is partially unemployed.

Whether the employer may be relieved of benefit charges.

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 this employer on March 12, 2011 as a part-time line cook/dishwasher. He was hired by an area manager at \$7.85 an hour; but, due to a misunderstanding with the general manager, he was paid \$7.25 an hour. When the employer learned about the mistake on September 12, claimant received back pay for the difference from his date of hire.

Claimant was hired to work anywhere from one to three shifts a week, 5 to 15 hours, depending on the employer's needs. He would be called into work when needed, and he had the right to turn down that work on short notice.

Claimant filed a claim for partial benefits due to a reduction of work hours for the two weeks ending July 30. He reported earnings of \$35 and \$50, respectively. He received partial benefits for those weeks and then ceased making unemployment claims.

Claimant remains an employee through the date of this hearing. He did not 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 the claimant was able and available for work for the two weeks ending July 30, 2011, and is eligible for partial benefits during that period.

The employer's evidence is that claimant worked at or below the range of hours he was hired to perform as a part-time employee for the two-week period at issue. The fact that claimant ceased claiming for benefits is supportive of the conclusion the employee increased his work hours to the mid-range or above what it agreed to at the time of hire. He is considered partially unemployed for these weeks.

Although the employer believes claimant might have declined work, it could offer no specifics in support of this conclusion. It also agrees claimant had the right to turn down on-call (unscheduled) work.

The employer is not granted a relief of charges for these two weeks, because it did not provide him the same part-time employment as it had been providing.

DECISION:

The department decision dated September 1, 2011, reference 01, is affirmed. The claimant is ineligible for partial benefits effective July 17, 2011, as he was able and available for work. The employer is not granted a relief of charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw