

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L NICHOLSON JR
Claimant

APPEAL NO. 09A-UI-08679-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELMER'S AUTO BODY
Employer

OC: 04/19/09
Claimant: Appellant (2)

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 claimant appealed an unemployment insurance decision dated June 15, 2009, reference 01, that concluded he was not eligible for benefits because he was employed on the same basis as his contract of hire. A telephone hearing was held on July 2, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?
Was the claimant employed at the same hours and wages as his contract of hire?

FINDINGS OF FACT:

The claimant worked as an auto body repairperson from September 2006 to June 15, 2009. When he was hired, the owner, Robert Timm, informed him that he would be working full time. Although the work would fluctuate some during the year, normally the claimant was working 40 hours per week.

Starting near the beginning of 2009, the number of hours of work provided by the employer to the claimant was substantially reduced. After weeks of reduced hours, including some week where the employer had no work for him, the claimant filed for partial unemployment insurance benefits effective April 18, 2009. His weekly benefit amount was determined to be \$361.00.

For the weeks following April 19, 2009, the claimant had the following hours and wages:

| Week ending date | Hours | Wages |
|------------------|-------|----------|
| April 25 | 2 | \$50.00 |
| May 2 | 6 | \$150.00 |
| May 9 | 10 | \$250.00 |
| May 16 | 24 | \$600.00 |
| May 23 | 8 | \$200.00 |
| May 30 | 20 | \$500.00 |

The claimant continued to have weeks of reduced wages and hours until June 15, 2009, when Timm informed the claimant that he was closing the shop.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective April 19, 2009. 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 96.19-38-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 working less than his regular workweek due to a reduction in hours effective April 19, 2009, and he was entitled to partial unemployment insurance benefits since his earnings were less than his weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours he was willing to work.

DECISION:

The unemployment insurance decision dated June 15, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs