

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOUGLAS R BACKHAUS
PO BOX 506
MANILLA IA 51454

WESTERN LIVESTOCK EXPRESS INC
PO BOX 1445
SIOUX CITY IA 51102

Appeal Number: 04A-UI-05036-AT
OC: 04-04-04 R: 01
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Western Livestock Express, Inc. filed a timely appeal from an unemployment insurance decision dated April 28, 2004, reference 01, which allowed benefits to Douglas R. Backhaus upon a finding that he was working a reduced workweek basis. After due notice was issued, a telephone hearing was held May 24, 2004 with Mr. Backhaus participating. Safety and Compliance Administrator Andy Gates participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Douglas R. Backhaus has been employed by

Western Livestock Express, Inc. since August 10, 2002. He normally works 40 or more hours per week. During the week of April 4 through April 10, 2004 he worked fewer hours than normal because less work was available from his employer. His gross earnings that week were less than the sum of his unemployment insurance weekly benefit amount plus \$15.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Backhaus is eligible for unemployment insurance benefits for the week ending April 10, 2004. He is.

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".

The statute defines a partially unemployed individual as one who works less than his regular weekly amount and earns less than the sum of his weekly benefit amount plus \$15.00 in a given week. See Iowa Code Section 96.19. The evidence in this record establishes that during the week of April 4 through April 10, 2004, Mr. Backhaus' hours and earnings were reduced because the employer did not have work available for him. Under these circumstances, Mr. Backhaus is eligible for benefits for the week in question.

DECISION:

The unemployment insurance decision dated April 28, 2004, reference 01, is modified. The claimant is eligible for unemployment insurance benefits for the week ending April 10, 2004.

tjc/b