

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEAL A CURTIS

Claimant

APPEAL NO. 13A-UI-13198-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENCO HIGHWAY CONSTRUCTION CORP

Employer

OC: 12/05/10

Claimant: Appellant (4-R)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 25, 2013, reference 04, that concluded he was working excess hours and could not be considered able to and available for work. A telephone hearing was held on December 18, 2013. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 5, 2010. His weekly benefit amount was determined to be \$346.00. He is currently filing for Emergency Unemployment Compensation on the 2010 claim.

The claimant worked for the employer from July 20, 2013, to November 1, 2013, when he was informed that he was going to be laid off. He filed an additional claim for benefits effective October 27, 2013. He did not work every day that week and had earnings of \$418.50. He reported wages of \$290.00 and received \$96.00 in unemployment insurance benefits for the week.

The claimant had a full week of work during the week ending November 9 and earned \$621.00. His last day of work was November 8. He reported \$610.00 in wages for the week and was not paid any benefits.

After November 8, 2013, the claimant was temporarily laid off until work starts up again for the employer. The claimant is able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The rules provide that a claimant is disqualified for being unavailable for work if: "The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market." 871 IAC 24.23(23). The unemployment insurance rules provide that a claimant is not eligible for benefits for any week in which his earning exceed his weekly benefits plus \$15.00. 871 IAC 24.18.

The claimant was ineligible for benefits for the weeks ending November 2 and 9, 2013, because his earnings for the weeks were over his earnings limit of \$361.00. His claim, however, should not have been indefinitely locked at that time because he remained available for work and thought he was going to be laid off.

It appears the claimant underreported his wages for the week ending November 2. This was not an issue on the hearing notice. The matter of deciding whether the claimant failed to properly report his wages and was overpaid for the week ending November 2 is remanded to the agency. It should be noted that during the fact-finding interview in the case, the employer reported wages for the week the wages were paid not the week earned.

DECISION:

The unemployment insurance decision dated November 25, 2013, reference 04, is modified in favor of the claimant. The claimant was able to and available for work and his claim should be unlocked effective November 10, 2013. The matter of deciding whether the claimant failed to properly report his wages and was overpaid for the week ending November 2 is remanded to the agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css