

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE D VAUGHN SR
Claimant

APPEAL NO. 11A-UI-05442-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE BRANDS CORP
Employer

OC: 03/13/11
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 April 14, 2011, reference 01, that concluded the claimant was ineligible to receive partial unemployment insurance benefits. A telephone hearing was held on May 18, 2011. 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.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer as a utility worker May 20, 2010. He was working full-time 40 or more hours per week. After working full-time for several months, his hours were reduced. He reopened an existing claim for unemployment insurance benefits in February 2011, because he was working less than 30 hours per week and his earnings were less than his earning limit at the time of \$389.00 (weekly benefit amount of \$374.00 plus \$15.00).

The claimant was required to file a new claim for unemployment insurance benefits effective March 13, 2011. His earnings limit on his new claim was \$333.00 (weekly benefit amount of \$318.00 plus \$15.00. He had weeks after March 13 where he worked less than full-time and his earnings were less than his earning limit.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective March 13, 2011. The claimant filed a claim requesting partial unemployment

insurance benefits for the weeks in which his earnings were less than the weekly benefit amount plus \$15.00.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 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 preponderance of the evidence establishes the claimant's regular workweek at the point he filed his new claim was 40 hours per week. He was working less than that regular workweek due to a reduction in hours, and he is entitled to partial unemployment insurance benefits effective March 13, 2011, 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 § 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.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The employer's account is subject to charge for benefits, because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated April 14, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account will be subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw