

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS H DEBNER
Claimant

APPEAL NO. 13A-UI-04097-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMANA NORDSTROM INC
Employer

OC: 03/10/13
Claimant: Respondent (1-R)

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 employer appealed an unemployment insurance decision dated March 29, 2013, reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since his hours had been reduced. A telephone hearing was held on May 10, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Potique Johnson participated in the hearing on behalf of the employer with witnesses, Carol Bevard and Karen Von Ashen. Exhibits One through Six were admitted into evidence at the hearing.

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 part time as a breakfast bar host on June 29, 2010. When he was hired, the manager informed him that he would be working five days per week and about 30 hours per week.

The claimant also has a second part-time job working as needed at events at the Cedar Rapids Stadium and Ice Area. The job has not conflicted with the claimant's scheduled work.

The claimant worked five days and an average of 30 hours per week for the employer up until February 2013. There would be some slower times, such as the months of January and February when he worked an average of 24 hours per week, but he was still scheduled to work five days per week. His hourly rate of pay was \$8.35 until July 2012 when the rate was raised to \$8.50.

On January 20, 2013, the claimant made a request to take February 18 to March 4 off work. He made the request so he could travel to Florida to assist his sister who was having hip surgery.

The time off was granted as an unpaid leave of absence. The manager informed him that the employer could not guarantee his current number of hours when he returned. In the previous two years, the claimant had taken the same amount of time off without any problems.

After the claimant took the two weeks off, the employer has scheduled him to work an average of two days per week. The claimant was delayed by one day returning to Iowa due to the need to take his sister to a medical appointment. He found his own replacement for his shift on March 5. The only other day the claimant was scheduled to work during the week of March 3 was March 7.

As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of March 10, 2013. His weekly benefit amount was determined to be \$250.00. His base period on which his claim was based was October 1, 2011, through September 30, 2012. His wages from the employer during the base period and the average weekly wage based on those wages is shown below.

Base Period Quarter	Wages	Average Weekly Wage	Average Hours/Week
2011 Fourth Quarter	\$3,652.00	\$280.92	33.6 hours
2012 First Quarter	\$2,559.00	\$196.85	23.6 hours
2012 Second Quarter	\$3,832.00	\$294.77	35.3 hours
2012 Third Quarter	\$3,395.00	\$261.15	30.7 hours

The claimant has had weeks since filing the claim for unemployment insurance benefits in which he worked less than his regular hours and had earnings less than his earnings allowance of \$265.00. The following table shows the days and scheduled hours the claimant worked for the employer and the wages he reported, including his wages from his second job).

Week (Sunday through Saturday)	Days and (Hours) Worked	Wages Reported
March 10	2 days (11 hours)	\$146.00
March 17	2 days (11 hours)	\$174.00
March 24	2 days (10.75 hours)	\$160.00
March 31	2 days (12.50 hours)	\$302.00
April 7	3 days (16.25 hours)	\$154.00
April 14	2 days (12 hours)	\$154.00
April 21	2 days (12.25 hours)	\$214.00
April 28	2 days (10.5 hours)	\$189.00
May 5	2 days (13.25 hours)	\$60.00

On March 16, he was called to work as a replacement for an unscheduled shift. Since he was not on the schedule, he had committed to work at a wrestling tournament at the Ice Arena that day in his other job. As a result, he declined the shift.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective March 10, 2013. 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 § 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 with the employer at the point he filed his new claim was 30 hours per week. He was working less than that regular workweek due to a reduction in hours effective March 10, 2013, 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 § 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 fact that the claimant missed one day of work the week before he filed his claim for benefits does not affect his eligibility for unemployment insurance benefits afterward. The fact that the claimant had a conflict when he was called in to work on a day he was not scheduled does not affect his eligibility either. Finally, I believe the claimant's testimony that when he was hired he was told he would work about 30 hours a week and was allowed to take two weeks off in the past without consequence. I cannot conclude that telling the claimant that he was not "guaranteed current number of hours upon return" made his reduction in hours voluntary and made him ineligible for benefits when the employer decided to change him from a five-day-per week employee as he had been working for over two-and-a half years to a two-day-per week employee.

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. There was a substantial reduction in his days and hours of work.

There is a discrepancy in the number of hours the claimant was to work during the week of May 5 through 11 and the wages he reported for the week. The issue of whether the claimant properly reported his wages and was eligible for benefits for that one week is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 29, 2013, reference 01, is affirmed. 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. The issue of whether the claimant properly reported his wages and was eligible for benefits for the week ending May 11, 2013, is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs