

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELO A TAYLOR**  
Claimant

**APPEAL NO. 10A-UI-14785-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AUTO SHINE CAR WASH INC**  
Employer

**OC: 08/29/10**  
**Claimant: Respondent (2R)**

Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits  
Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 18, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2010. Claimant participated. Employer participated by Brenda Waddell, owner. Michael Finely was a witness for the employer. Phil Burian, attorney at law, represented the employer. The record consists of the testimony of Angelo Taylor; the testimony of Brenda Waddell; the testimony of Michael Finely; and Employer's Exhibits 1-2.

**ISSUE:**

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a full service car wash. The claimant was hired on August 28, 2009, as a part-time attendant. He was paid by the hour at minimum wage. He was not guaranteed any certain number of hours. The claimant was also given the opportunity to work as a service writer. He would earn a 6% commission if he made a minimum number of sales. The claimant was never promoted to the position of service writer. He did sales work from time to time when that opportunity was offered by the employer.

The claimant established a claim for benefits with an effective date of August 29, 2010. He filed this claim because he felt he was not getting as much pay as he had previously. He could not precisely date when he felt that his pay was being decreased other than to say it might have been when he got his pay raise. His best estimate was that he got his pay raise in July 2010.

The employer provided a computer recap of the claimant's hours and wages from his initial paycheck through the paycheck of September 18, 2010. (Exhibit 1). Although the claimant's hours did vary somewhat, the claimant's hours after he applied for unemployment benefits were 25.62 for September 4, 2010; 25.30 for September 11, 2010; and 34.32 for September 18, 2010. The gross wages for those same periods were \$204.96; \$250.91; and \$274.56.

The claimant did have only 7.73 hours for the week of July 24, 2010. The reason that the claimant worked so few hours that week was that he was sick on July 19, 2010; July 20, 2010; July 23, 2010; and July 24, 2010. (Exhibit 2). The claimant also had sick days on August 6, 2010; August 15, 2010; August 20, 2010; August 22, 2010; August 27, 2010; August 30, 2010; and August 31, 2010. (Exhibit 2) On August 2, 2010, the claimant did not return for a scheduled shift.

The claimant was terminated on October 9, 2010.

#### **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployed if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code section 96.19-38-b.

A careful review of the claimant's hours and wages show that he was not employed at less than his usual hours and wages. The claimant hours did vary from week to week, which was part of the original contract of hire. The wages would also vary if the claimant did some sales work and earned commissions. The greatest variances occurred when the claimant did not come to work, either because he was sick or because he refused work. The claimant was not partially unemployed and is not entitled to benefits for partial unemployment beginning August 31, 2010.

Since the date that the representative's decision was issued there has been a separation of employment. This matter is remanded to the claims section for consideration of the separation.

#### **DECISION:**

The decision of the representative dated October 18, 2010, reference 01, is reversed. The claimant is not eligible for partial unemployment insurance benefits beginning August 31, 2010. This matter is remanded to the claims section for determination of the subsequent separation, which occurred on October 9, 2010.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs