

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY MIZER
Claimant

APPEAL NO: 10A-UI-00992-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE AMERICAN INSURANCE COMPANY
Employer

OC: 11/08/09
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 – Able and Available for Work
Iowa Code § 96.19-38 – Total and Partial Unemployment

STATEMENT OF THE CASE:

Jeffrey Mizer (claimant) appealed an unemployment insurance decision dated January 12, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was working too many hours so that he was removed from the labor market. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 1, 2010. The claimant participated in the hearing with former co-employee Greg Schoonover. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is available to work and whether he is considered partially unemployed?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full time from September 2002 through January 26, 2010 when he voluntarily resigned. The final separation from employment was not included in the hearing notice and there has been no determination made as to whether it is disqualifying or not. This case will be remanded for further agency action on those issues.

The claimant filed for partial unemployment benefits as of November 8, 2009 and benefits were denied because he did not meet the availability requirements of the law since he was working full time. Apparently other employees of the same company and under the same conditions have been allowed benefits; the claimant had a former employee testify to confirm that information.

The claimant was certainly earning less than his weekly benefit amount plus \$15.00 but he was working more than 40 hours per week. He testified that he spent numerous hours working for this employer without reimbursement. His letter states, "Further I wish to note that the main

reason I was denied is because of excessive hours worked. When I was asked how many hours a week I worked, I just told them the total number of hours, which is over forty. What the examiner failed to understand is that I consider all time spent working for my employer as hours worked. Examples of the hours that I consider hours worked are:

- Conference calls, mandatory phone clinics – unpaid
- Driving time to and from mandatory meetings – unpaid
- Driving to and from appointments – unpaid
- Hours spent trying to produce my own leads to sell insurance – unpaid
- Mandatory paperwork – unpaid

All of the above unpaid hours directly affect the amount of productive selling time that I have. This means that the company has diminished the amount of hours that I can make a living. Even though I am ready, willing and able to work at all times; my actual hours that produce income would be well under forty hours a week, thus I ask you to reverse the decision."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is available to work and whether he is considered partially unemployed?

Iowa Code § 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".

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant has the burden of proof on elements of basic eligibility. See Iowa Code § 96.6-2. The first element of eligibility is that the individual must be unemployed, either totally or partially. See Iowa Code § 96.19-38. The claimant contends he is partially unemployed because he is not compensated for the amount of time he works. However, the claimant is probably working over 40 hours per week, which therefore disqualifies him as being partially unemployed. He fails to understand the initial decision which found he does not meet the availability requirements because he is working to such a degree that he is removed from the labor market. The claimant's time and efforts were devoted to his full-time job and while the administrative law judge empathizes with the claimant that he was not earning sufficient wages on which to live, the decision must be made in accordance with the law. The claimant is not partially unemployed and therefore, does not meet the availability requirements of the law. Benefits are denied.

The issues raised by the claimant as to his final separation were not included in the Notice of hearing for this case, and the case will be remanded for an investigation and determination on those issues. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated January 12, 2010, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and does not qualify for unemployment insurance benefits. This case is remanded to the Claims Section for investigation and determination of the claimant's final separation from employment.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css