

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARDO D WATTS

Claimant

APPEAL NO. 14A-UI-02951-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 06/16/13

Claimant: Respondent (4)

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 5, 2013, reference 10, 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 April 9, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Elena Rocha participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's weekly benefit amount was \$318.00 based on his wages from Earthgrain Bakery and Tri-State Concrete. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?

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 June 16, 2013. His weekly benefit amount was \$318.00 based on his wages from Earthgrain Bakery and Tri-State Concrete.

The claimant was hired in October 2013 to work part time for the employer about 30 to 34 hours per week and continues to work for the employer. He started working as an auto technician but later transferred to the deli department. The transfer to the deli department did not involve any change in his hours or pay. Until February 5, the claimant's rate of pay was \$8.15 per hour. Starting February 5, the claimant's rate of pay was \$8.55 per hour.

The claimant filed an additional claim for unemployment benefits effective February 9, 2014. He has worked 30 to 32 hours per week since filing for unemployment for earnings of approximately \$256.50 to \$273.60 per week.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. The claimant currently is denied benefits due to an administrative penalty.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective February 9, 2014. 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.

He was working less than that his regular workweek based on his base-period employment. 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 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 not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges will be determined at that time but the employer will not be subject to charge if it continues to provide the claimant the same part-time employment as he is currently receiving.

The claimant currently is denied benefits due to an administrative penalty.

DECISION:

The unemployment insurance decision dated March 5, 2013, reference 10, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits based on current employment situation with the employer. But he remains subject to an administrative penalty that denies him benefits. The employer's account is not currently chargeable for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css