

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D DARBY
Claimant

APPEAL NO: 15A-UI-00493-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2
Employer

OC: 11/16/14
Claimant: Appellant (4/R)

Iowa Code § 96 .4(3) – Availability for Work
871 IAC 24.23(22) – Availability

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 5, 2014 (reference 01) determination that denied him benefits as of November 16, 2014 because he was still employed at the same hours and wages he had been hired to work. The claimant participated at the February 5 hearing. Andrea Lawrence, the human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant had not intended to receive any benefits until he was on a two-week layoff in December. Since the claimant did not file any weekly claims until he was laid off, the claimant is eligible to receive benefits for the weeks ending December 27, 2014 and January 3, 2015. This matter will be remanded to the Benefits Bureau to determine if the claimant has met all other eligibility requirements for these two weeks.

ISSUE:

Is the claimant eligible to receive benefits as of November 16, 2014?

FINDINGS OF FACT:

The claimant works full time for the employer. In November 2014 the claimant received information there was a possibility the employer's would be closed for two weeks in December and employees would be temporarily laid off from work. The claimant took a proactive approach and established a claim for benefits during the week of November 16, 2014. His maximum weekly benefit amount is \$225. He had no intention of filing any claims unless or until he was laid off from work.

The claimant reopened his claim for benefits during the week of December 21. The claimant was on a temporary two-week layoff from December 22, 2014, through January 3, 2015. The first time he filed weekly claims after he established his claim was for the weeks ending December 27, 2014 and January 3, 2015.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim he must be able to and available for work. Iowa Code § 96.4(3). While it may be unusual for a claimant to establish a claim before he actually becomes temporarily unemployed, the law does not prohibit a person from doing this. The claimant realized he was not eligible to receive benefits as of November 16 because he was still working full time. 871 IAC 42.23(22).

He established his claim in mid-November because he had been told he may be on a two-week layoff in December. The evidence then establishes that when the claimant was on a two-week layoff he filed an additional claim the week of December 21, 2014. He then filed weekly claims for the weeks ending December 27, 2014, and January 3, 2014. These two weeks he did not work because the employer was shut down.

Even though the claimant did not file a timely appeal from the December 5, 2014 determination, a claimant's availability for work should be reviewed each week a claimant files a weekly claim. Also, the claimant's availability must be examined after he filed an additional claim the week of December 21. Since the claimant did not file a claim until the week ending December 27 or after the December 5 determination, the timeliness of appeal issue does not apply in this case.

If he has met all other eligibility requirements, the claimant is eligible to receive benefits for the week ending December 27 and January 3 when he did not work because he was on a temporary two-week layoff. The administrative record indicates the claimant filed a claim for the week ending December 27. This matter will be remanded to the Benefits Bureau to pay the claimant benefits for the two weeks he was on a temporary layoff if he has met all other eligibility requirements.

DECISION:

The representative's December 5, 2014 (reference 01) determination is modified in the claimant's favor. The claimant was not eligible to receive benefits as of November 16, 2014 because he was working full time and was not unemployed or partially unemployed. Since the claimant did not file any weekly claims until the weeks ending December 27, 2014 and January 3, 2015 when he was on a temporary two-week layoff, he is eligible to receive benefits for these weeks.

This matter is **remanded** to the Benefits Bureau to pay the claimant benefits for these two weeks, if he has met all other eligibility requirements during these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can