

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RONALD E TOLSON
909 E 23RD ST
DES MOINES IA 50317

KELLY SERVICES INC
999 W BIG BEAVER RD
TROY MI 48084-4716

Appeal Number: 04A-UI-08341-SWT
OC: 07/04/04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 27, 2004, reference 01, that concluded he was unavailable for work for the week ending July 10, 2004. A hearing was held on September 1, 2004, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Darrow participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 4, 2004. The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. He was working on a full time assignment at EDS company. He filed for partial unemployment insurance benefits during the week ending July 4, 2004, because the only days that the employer had work for him were on July 6 and 7. The claimant reported

to work on July 8 and 9 but was sent home by his supervisor because there was not enough work for everyone. The claimant did not volunteer to go home from work. The claimant's weekly benefit amount is \$237.00. The claimant earned less than \$237.00 in wages for the week ending July 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work as required by Iowa Code Section 96.4-3. The preponderance of the evidence establishes that the claimant was available for work throughout the week ending July 10, 2004, but the employer lacked work for him on July 5, 8, and 9.

Iowa Code Section 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.

Iowa Code Section 96.7-2-a(2) provides that the amount of 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 unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The claimant is eligible to receive partial unemployment insurance benefits for the week ending July 10, 2004, since he was working less than full-time and his wages were less than his weekly benefits amount. The employer's account shall be charged for benefits paid to the claimant since because it was not providing the same full-time employment as provided in the base period and the claimant was not discharged, did not quit, and did not refuse work.

DECISION:

The unemployment insurance decision dated July 27, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc