

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J BRENNAN
Claimant

APPEAL NO: 13A-UI-09613-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIEDBARTON SECURITY SERVICES LLC
Employer

OC: 07/24/11

Claimant: Appellant (4)

Section 96.4-3 - Availability for Work
871 IAC 24.23(26) - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Patrick J. Brennan (claimant) appealed a representative's August 19, 2013 decision (reference 08) that concluded he was not qualified to receive unemployment insurance benefits as of December 9, 2012. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-09614-DT. The claimant participated in the hearing. AlliedBarton Security Services, L.L.C. (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant partially unemployed even though he remained able and available for work, and was he therefore eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the named employer on or about December 7, 2012. He works part time (about 32 hours per week) as a security guard, earning \$11.00 per hour. The claimant's most recent employment prior to this employment was with Electrolux Home Products, for which he worked full time (40 hours per week) and earned \$16.00 per hour. The claimant's last day of employment with Electrolux was January 7, 2011, when that employer closed.

The claimant had established an unemployment insurance benefit year effective July 25, 2010 under which he originally received some Workshare benefits; upon the closure of Electrolux, he began receiving regular unemployment insurance benefits effective January 8, 2011. After regular benefits were exhausted on that claim, he began receiving emergency unemployment compensation (EUC) benefits. Upon expiration of the claim year, he established a second claim

year effective July 24, 2011 and began receiving regular unemployment insurance benefits and then EUC benefits. The base period for the July 24, 2011 claim year still consisted solely of his full-time wages with Electrolux.

When that second claim year expired, he was not eligible for a third regular benefit year because he had no base period wages for a claim year effective July 22, 2012. Therefore, he continued to receive the remaining EUC benefits available to him under the 2011 claim year, including additional EUC benefits when those benefits became available effective November 24, 2012. After the claimant obtained his part-time employment with his new employer, he continued to make weekly claims and reported his wages earned for those weeks, receiving partial EUC benefits based upon his weekly benefit amount of \$385.00.

The claimant had been approved for Department Approved Training (DAT) status as of at least September 3, 2011, as he was enrolled in a program at Iowa Central Community College. He was most recently approved to remain in that status through May 29, 2013. Therefore, he had not been required to search for work to remain eligible for unemployment insurance benefits. The fall 2012 term ended on or about December 15, 2012; the spring term was scheduled to begin on or about January 8, 2013. The claimant had registered for the spring term and had intended to continue working his overnight weekend work with the employer while continuing his course of study the remaining portion of the week. However, on or about January 14, 2013 the claimant withdrew from school for the spring semester, having decided that as of that time the 32-hour per week employment was sufficient for him, and that he preferred to use his available time to be with his wife who was in poor health.

The claimant ceased receiving any further partial EUC benefits after January 19, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits after December 9, 2012. The claimant filed weekly continued claims requesting partial EUC benefits for the weeks in which his wages were less than \$400.00 (his weekly benefit amount plus \$15.00).

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.

The Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). The Agency, however, relied on 871 IAC 24.23(21) in denying benefits to the claimant.

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In the present case, the claimant was working 40 or more hours per week during the base period for his 2011 claim year for Electrolux. This establishes the claimant's "regular workweek" for determining whether he was partially unemployed under the statutes and rules. The claimant had weeks since filing his additional claim effective November 25, 2012 in which he worked less than the regular full-time hours he had been working for Electrolux during his base period and in which he earned less than \$400.00. Until the week starting January 13, 2013 the claimant continued to be actively enrolled in a DAT covered program, and so was exempt from the requirement that he be available for other work and be actively seeking other full time employment despite his working for his new employer. Through January 12, 2013 he meets the definition of partially unemployed and is exempt from being available for work as required by law. He was qualified to receive unemployment insurance benefits in weeks in which he worked less than 40 hours and has earnings less than \$400.00.

He is no longer eligible as of January 13, 2013, as he ceased being eligible for his DAT exemption and would have to remain able and available for other full time employment, which he chose not to pursue.

The employer is not presently chargeable for benefits paid to the claimant because it is not a base period employer on the claim. Further, the benefits paid since the employment began were EUC benefits, not chargeable against any employer.

DECISION:

The unemployment insurance decision dated August 19, 2013 (reference 08) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits through January 12, 2013, provided he was otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant. Benefits are denied effective January 13, 2013.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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