

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

ALEXANDER BARBER  
2021 MAPLE ST  
DAKOTA CITY NE 68731

TYSON FRESH MEATS INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

**AMENDED**

Appeal Number: 04A-UI-09332-LT  
OC: 07-18-04 R: 01  
Claimant: Respondent (4)

**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 and Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 19, 2004, reference 01, decision that allowed partial benefits. After due notice was issued, a hearing was held on September 22, 2004. Claimant did participate. Employer did participate through Pat Parkhill.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked 18.62 hours over three days the week of July 19 and called in two days due to illness on July 20 and 21. He reported wages of \$233.00 for the week ending July 24. Claimant is paid \$12.25 per hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work the entire week ending July 24, 2004 but partial benefits are allowed.

Iowa Code section 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".

18.62 hours worked/3 days worked = 6.2 hours per day average  
6.2 hours per day average x 5 days = 31 hours x \$12.25 = \$380.00 probable wages had claimant not missed work on two days due to illness  
\$334.00 WBA x .25 = \$84.00 (25% of WBA)  
\$380.00 wages - \$84.00 = \$296.00 deduction from benefits  
\$334.00 WBA - \$296.00 deduction from benefits = \$38.00 partial benefits allowed

Since claimant was not available to work on two days that week, he is not entitled to receive benefits for that period; however, employer was not providing full-time, regular hours that week. Accordingly, benefits are proportionately allowed in the amount of \$38.00 for the week ending July 24, 2004.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has been overpaid \$146.00.

DECISION:

The August 19, 2004, reference 01, decision is modified in favor of the appellant. The claimant was only able to work a partial week ending July 24 and was entitled to partial benefits of \$38.00 for that week. The claimant has been overpaid \$146.00.

dml/pjs/tjc