

**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**

**RALPH ANDRESEN
PO BOX 215
2589 – 380TH AVE
LOW MOON IA 52757**

**UNITED PARCEL SERVICE
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-12192-DT
OC: 10/10/04 R: 04
Claimant: Appellant (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 - Availability for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) - Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Ralph Andresen (claimant) appealed a representative's November 8, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with United Parcel Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2004. The claimant participated in the hearing. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. 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.

FINDINGS OF FACT:

The claimant started working for a prior employer on March 11, 2002. He worked full time as a loader in the employer's shipping department on a Monday through Friday, 7:00 a.m. to 3:30 p.m. schedule. His rate of pay was \$10.05 per hour. His employment with that employer ended October 3, 2003. The claimant had established an initial unemployment insurance benefit year effective October 5, 2003. His base period for that claim year began July 1, 2002 and ended June 30, 2003. The claimant's weekly benefit amount was determined to be \$247.00 based on the wages paid by the prior employer. His earnings limit was determined to be \$262.00. The claimant began receiving unemployment insurance benefits each week.

The claimant started working for the employer on November 17, 2003 in a part time temporary position. After completion of the temporary work in January 2004, on February 16, 2004 the claimant began a permanent part time position with the employer as a porter in the employer's Davenport, Iowa, hub. His usual work schedule is from 6:00 a.m. to 11:00 a.m., Monday through Friday. His rate of pay is \$9.00 per hour. Since starting his job with the employer, the claimant continued to file weekly claims for benefits and reported his earnings each week. The Agency paid the claimant partial unemployment insurance benefits for weeks in which his earnings were less than \$262.00 until the expiration of the initial claim year on October 10, 2004.

The claimant established a second unemployment insurance benefit year effective October 10, 2004. His base period for that claim year began July 1, 2003 and ended June 30, 2004. The prior employer paid the claimant \$5,299.04 in wages during the third quarter of 2003, which was the claimant's highest quarter of earnings during his new base period. The claimant's new weekly benefit amount was determined to be \$230.00 based on the full time wages paid by the prior employer in the third quarter of 2003. His new earnings limit was determined to be \$245.00.

Since October 10, 2004, the claimant has had weeks in which he worked less than 40 hours and earned less than \$245.00. The claimant's hours and pay have not changed from his original employment with the employer. Since taking the job with the employer, the claimant has continued to actively seek other better-paying or full-time employment and would quit his job with the employer if he found more suitable work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits effective October 10, 2004, and thereafter. The claimant is requesting partial unemployment insurance benefits for the weeks in which his wages were less \$245.00. The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he has separated from his regular job and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code section 96.19-38-b.

Iowa Code section 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.

The claimant had weeks after he filed his new claim in which he was working less than the regular full-time hours he had been working during the high quarter of his base period and in which he earned less than \$245.00. The Agency, however, relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In the present case, while the claimant was working part time for the employer during the non-high quarters of the base period, the evidence establishes that during the high quarter of the base period the claimant was regularly scheduled to work 40 per week. Under 871 IAC 24.1(135)(c), "full-time week" is defined as "the number of hours or days per week of full-time work currently established by schedule, custom or otherwise for the kind of service an individual performs for an employing unit."

The preponderance of the evidence establishes that a regular full time workweek for the claimant's new claim was 40 hours per week. He was working less than his regular workweek due to his initial separation from employment and failure to find supplemental employment as of October 10, 2004, and he was entitled to partial unemployment insurance benefits since his earnings were less than his weekly benefit amount plus \$15.00.

The next issue is whether the employer's account is subject to charge for benefits paid to the claimant during the benefit year beginning October 10, 2004.

Iowa Code section 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 claimant was separated from his regular full-time employer and continued to work for his part-time base period employer. The employer was providing the claimant with substantially the same employment as it provided during his base period. Consequently, the claimant is qualified to receive unemployment insurance benefits effective October 10, 2004, provided he was otherwise eligible, and pursuant to the rule, the employer is exempt from charge for benefits

paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during his base-period.

DECISION:

The unemployment insurance decision dated November 8, 2002 (reference 01) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits in the claim year beginning October 10, 2004, provided he is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant, so long as it continues to provide him the same hours and wages.

ld/tjc