

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES H THOMAS
Claimant

APPEAL NO: 12A-UI-09328-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS LLC
Employer

OC: 06/24/12

Claimant: Respondent (2/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

American Blue Ribbon Holdings, L.L.C. (employer) appealed a representative's July 25, 2012 decision (reference 03) that concluded James H. Thomas (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2012. The claimant participated in the hearing. Mara Benjamin of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Julie Perez. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 18, 2011. He works part time as a dish machine operator at the employer's Davenport, Iowa restaurant. His gross hourly rate of pay is \$8.50. The claimant established an unemployment insurance benefit year effective June 24, 2012; his weekly benefit amount was calculated to be \$144.00. Therefore, if he works at least 18.7 hours per week, his earnings will exceed the earnings limitation for receiving any partial unemployment insurance benefits.

The claimant had previously been scheduled for between 22 and 25 hours per week, based on his stated availability of from 4:00 p.m. to close (then 1:00 a.m.), Sunday through Saturday. Beginning in about May 2011 the claimant began having other employees cover some of his shifts, as he had lost his access to transportation other than public transportation. As a result, beginning about June 22 the employer was only scheduling the claimant for about 16 hours per week, two shifts, typically Fridays and Saturdays from 5:00 p.m. to close, and scheduled someone else to cover the shifts the claimant had been having difficulty filling, typically Sundays

from 5:00 p.m. to about 8:00 p.m. or 9:00 p.m. Even after reducing the claimant's scheduled hours the claimant was not working all the hours available to him, typically running late and occasionally leaving early due to the transportation issues.

On July 20 the employer had the claimant provide written clarification of his availability. He indicated that his current availability due to his transportation issues was 4:00 p.m. to 11:00 p.m. Sunday through Saturday. The employer has since increased the claimant's scheduling back up to about 20 hours per week within the hours to which the claimant has committed, and he is working virtually all of those hours.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00. Iowa Code §96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not available, able or willing to work the hours available to him. Rather, he must remain available for work on the same basis as when he was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's earnings for the weeks after June 24, 2014 were below the \$159.00 partial eligibility level is because he was not able and available to work the number of hours the employer normally had available to him because of his loss of his other means of transportation, and he is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29). The administrative law judge further notes that the claimant failed to properly report wages that he did earn at least for the benefit week ending June 30, 2012.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment is remanded the Claims Section.

DECISION:

The unemployment insurance decision dated July 25, 2012 (reference 03) is reversed. The claimant is not eligible for partial unemployment insurance benefits effective June 24, 2012 through at least the date of the hearing. Further eligibility would be determined based on the claimant's availability at that point. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs