

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE L VAN BAALE
Claimant

CSOI CORP
Employer

APPEAL NO: 11A-UI-02369-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/09/11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 25, 2011, reference 01, that held he is not eligible for benefits effective January 9, 2011, because he is still employed at the same job, hours and wages. A telephone hearing was held on March 24, 2011. The claimant participated. Ray Hults, Store Manager, participated for the employer.

ISSUES:

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was laid-off from his full-time job by Central Iowa Energy LLC (er#352596) on January 12, 2009. This employer remained a base period employer for qualifying wages up to and including his January 10, 2010 unemployment claim. He has not been re-called to work.

Claimant began working a part-time cashier/clerk job for the employer on May 6, 2004. He has continued to work for this employer thru the date of this hearing. He averages about 32 hours a week and his average weekly pay during his base period is \$336.00. His weekly unemployment benefit amount (WBA) is \$218.00. After filing his January 9, 2011 unemployment claim, he has been reporting gross earnings of \$246.00 or more.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge concludes claimant is not partially unemployed and he is not eligible for benefits effective January 9, 2011.

Claimant is working the same part-time job for his employer as he has from his start date in 2004. Claimant was eligible for partial benefits in 2009 and 2010 due to his lay-off from his former full-time, base period employer (Central Iowa Energy). This employer is no longer a base period employer on his 2011 claim for eligibility purposes, so the focus is upon his part-time employer, as the sole base period employer.

Since there has been no employment change in his part-time work status, he is no longer considered partially unemployed. In addition, the claimant has excessive earnings from his part-time employment (\$246.00 or more) that exceeds his WBA (\$218.00), which also disqualifies him from receiving any benefit.

DECISION:

The department decision dated February 25, 2011, reference 01, is affirmed. The claimant is not eligible for benefits effective January 9, 2011, as he is working the same part-time job as in his base period, and he is not partially unemployed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs