

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD E OLSON**  
Claimant

**APPEAL NO. 13A-UI-03687-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETERSON AIR CONDITIONING & HTG**  
Employer

**OC: 01/27/13**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 21, 2013 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 1, 2013. Claimant participated. Employer participated through company president David Peterson. Standby witnesses Rachel Shoumaker and Patty Peterson did not participate. The parties waived fact-finding and notice on the issue of the separation. See, 13A-UI-05181-LT.

**ISSUE:**

Is the claimant able to and available for work effective January 27, 2013?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a service technician/installer and was separated from employment on February 8, 2013. Work was slow and he did not work his regular full-time hours for the two weeks ending February 9, 2013. He then quit to take another job on February 13, 2013 with Hayloft Property Management of Tea, South Dakota (See, reference 04 representative's decision).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed for the two weeks ending February 9, 2013.

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".

Iowa Code section 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.

Because the claimant was not employed under the same hours and wages as contemplated at hire for the two weeks ending February 9, 2013, he was considered partially unemployed. Benefits are allowed for those two weeks based upon reporting of weekly earnings.

Since claimant quit the job at the end of that two-week period, the separation is determined in the ALJ decision 13A-UI-05181-LT.

**DECISION:**

The March 21, 2013 (reference 02) decision is modified in favor of the appellant. The claimant was partially unemployed and benefits are allowed only for the two-week period ending February 9, 2013, provided he is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs