

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E SPECHT
Claimant

APPEAL NO: 11A-UI-08937-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM PAK INC LP2
Employer

OC: 09/12/10
Claimant: Appellant (2)

Iowa Code § 96.19(38)b – Partially Unemployed

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 30, 2011 determination (reference 01) that held him ineligible to receive benefits because he was still employed at the same hours and wages that the employer had hired him to work. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant is eligible to receive partial benefits for weeks in which he does not work full time.

ISSUE:

As of the May 29, 2011, is the claimant eligible to receive partial benefits during weeks he works less than full-time hours?

FINDINGS OF FACT:

The claimant started working full time for the employer in December 1988. Typically, the claimant works 40 hours or more a week. He established a claim for benefit during the week of September 12, 2010.

The claimant hurt his back and was restricted from working May 23 through 27, 2011. The claimant's physician released him to return to work the week of May 30. The employer did not have employees work on May 30, Memorial Day. The claimant reported to work on May 31, but was sent home because the employer did not have work for him to do. The claimant worked as scheduled the rest of the week of 24 hours. After the claimant's supervisor told him he would not receive holiday pay for Memorial Day because he had not worked the previous week, the claimant reopened his claim for benefits on June 3, 2011. Since June 3, the claimant has not worked 40 hours in other weeks because of a lack of work. As of July 29, the Department has paid the claimant partial benefits for weeks he has not worked 40 hours or has not earned gross wages of \$419.00 or more.

REASONING AND CONCLUSIONS OF LAW:

A claimant is considered partially unemployed when he works less than full time at his regular job and earns less than his maximum weekly benefit amount plus \$15.00. Iowa Code § 96.19(38)b. The claimant reopened his claim for benefits on June 3 because he only worked and earned wages for 24 hours of work, instead of the 40 hours that he usually worked. Since the claimant works as a full-time employee, the weeks in which he works less than full time hours and earns gross wages of less than \$419.00 because of the employer's business needs, he is eligible to receive partial benefits. As of May 29, 2011, the claimant is eligible to receive partial benefits.

DECISION:

The representative's June 30, 2011 determination (reference 01) is reversed. As of May 29, 2011, the claimant is eligible to receive partial benefits for weeks in which he works less than 40 hours because of the employer's business needs and earns gross wages of less than \$419.00.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs