

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY KIRKPATRICK
Claimant

APPEAL NO. 08A-UI-02541-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

OC: 02/10/08 R: 04
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Active Search for Work
Iowa Code § 96.19(38)(b) - Partial Unemployment

STATEMENT OF THE CASE:

Jimmy Kirkpatrick (claimant) appealed an unemployment insurance decision dated March 11, 2008, reference 02, which held that he was no longer temporarily unemployed and is required to start making work search contacts. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2008. The claimant participated in the hearing. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator. 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.

ISSUE:

The issue is whether the claimant is employed by the employer for less than his usual hours and wages so that he is partially unemployed and exempt from the work search requirements?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant works for a temporary employment agency and the jobs to which he is assigned vary in hours, wages and job duties. He has previously worked full-time assignments but is currently working in a part-time assignment. The claimant contends he is partially unemployed and should receive unemployment insurance benefits without having to make job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is partially unemployed with the employer and exempt from the work search requirements. Iowa Code § 96.4-3 and 871 IAC 24.22(3) provide that a claimant must make a personal and diligent effort to find a job and that a claimant shall be ineligible for benefits for any period for which the Agency finds the individual failed to make an active and earnest search for work. However, the Code further provides that the work search requirement is waived for a person who is "partially unemployed."

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 claimant is a temporary employee who works for a temporary employment firm. A temporary employee provides temporary services to the employer's clients in order to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects. Consequently, the claimant's regular job with this employer could be zero to 40 hours a week. He is not considered partially unemployed within the meaning of unemployment insurance laws. The claimant is required to make at least two in-person job contacts each week in order to be eligible to receive job insurance benefits.

DECISION:

The unemployment insurance decision dated March 11, 2008, reference 02, is affirmed. The claimant must make an active and earnest search for work in order to maintain his eligibility for job insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css