

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L PAXSON**

Claimant

**APPEAL NO: 11A-UI-16549-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARSHALLTOWN COMM SCHOOL DIST**

Employer

**OC: 11/27/11**

**Claimant: Appellant (1)**

Section 96.4-3 - Availability for Work

Section 96.3-3 - Eligibility for Partial Unemployment Insurance Benefits

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

**STATEMENT OF THE CASE:**

Richard L. Paxson (claimant) appealed a representative's December 23, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Marshalltown Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2012. The claimant participated in the hearing. Kevin Posekany appeared on the employer's behalf. 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:**

Was the claimant eligible for full or partial unemployment insurance benefits by being able and available for work?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 24, 2010. He worked and continues to work part-time as a bus driver. Until on or about November 17, 2009 the claimant had a primary full-time employer, Con-Struct, Inc. After the end of that employment, the claimant established an initial unemployment insurance claim effective November 29, 2009. The Con-Struct, Inc. employment was his only employment during his base period for that claim year (July 1, 2008 through June 30, 2009). Upon expiration of that initial claim year, he established a second claim year effective November 28, 2010. The Con-Struct, Inc. employment was his only employment during his base period for that claim year (July 1, 2009 through June 30, 2010). Upon expiration of that second claim year, the claimant established a third claim year effective November 27, 2011. The claimant's base period for this third and current benefit year is July 1, 2010 through June 30, 2011. The claimant's only wage credits in this new and current base

period are from the employer; there are no remaining wage credits in the base period from his employment with Con-Struct, Inc.

The claimant had sufficient wage credits from the employer in his third and current base period to be monetarily eligible for benefits this claim year; this would mean that he would not be eligible for continued EUC benefits under the 2009 or 2010 claim years. His weekly benefit amount for his current claim year is \$111.00 per week.

From the start of his employment through about December 6, 2011, the claimant's employment with the employer was to work about 15 hours per week, an hour and a half each morning and each afternoon, Monday through Friday. His average monthly contract pay was \$782.25 for the 2010 – 2011 school year, and \$797.25 for the 2011 – 2012 school year (both figures annualized). As of December 7 the claimant signed a modified contract under which he drove a route for which he is paid \$9.85 per hour for about seven hours per day, Monday through Friday, and so is averaging about \$1,034.25 per month, annualized ( $\$9.85 \text{ per hour} \times 7 \text{ hours per day} \times 5 \text{ days per week} \times 4 \text{ weeks per month} \times 9 \text{ school year months} \div 12 \text{ calendar months}$ ). He continues to work under that arrangement with no scheduled end date. He considers himself under-employed and part-time because he still has no full-time employment benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The substantive issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account is subject to charge in the claimant's current benefit year. A claimant is considered partially unemployed when the claimant has been separated or laid off from his "regular employer" and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38(b); see also Iowa Code § 96.3-3. The facts establish the claimant was separated from his prior regular job in November 2009.

The Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). Under 871 IAC 24.1(135)(c), "full-time week" is defined as "the number of hours or days per week of full-time work currently established by schedule, custom or otherwise for the kind of service an individual performs for an employing unit."

For the claim for the benefit years beginning November 29, 2009 and November 28, 2010, the claimant's regular workweek was based upon working full-time for Con-Struct, Inc. In the present case for the benefit year beginning November 27, 2011, the claimant's regular workweek must be based upon his status as of the point he filed his claim for his current year. The evidence indicates that at that point the claimant was working about 15 per week, which he had done since August 2010. This establishes the claimant's "regular workweek" for the current benefit year for determining whether he was partially unemployed under the statutes and rules.

The claimant's employment level with the employer has not decreased, but has in fact increased. The employer was providing the claimant with substantially the same or more employment as it provided during his base period. Consequently, the claimant is not qualified to receive partial unemployment insurance benefits. The administrative law judge further notes that even if there was a legal analysis under which the claimant might be theoretically eligible for benefits, even a person who is partially eligible would be required to file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week, and the amount of

his eligibility would then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3. The claimant's current weekly benefit amount is \$111.00; the claimant's weekly earnings are far in excess of this amount, and so under the formula he has no remaining eligibility.

While the administrative law judge understands that the claimant wishes to secure more full-time employment status than he currently holds, for purposes of unemployment insurance benefit eligibility he is currently working within his regular workweek for this current benefit year, and is not eligible for partial unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated December 23, 2011 (reference 01) is affirmed. The claimant is not eligible for partial unemployment insurance benefits in his benefit year effective November 27, 2011.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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