

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE G RAMIREZ**

Claimant

**APPEAL NO: 100-UI-17561-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – MARSHALLTOWN**

Employer

**OC: 10/25/09**

**Claimant: Appellant (1/R)**

Section 96.4-3 – Able and Available

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

**STATEMENT OF THE CASE:**

Jose G. Ramirez (claimant) appealed a representative's September 21, 2010 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits between June 27, 2010 and July 31 because he was sufficiently employed with Temp Associates – Marshalltown (employer) to be considered no longer in the labor market and able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2011. The claimant participated in the hearing. The employer opted to not participate directly in the hearing, but rather submitted a written statement in lieu of direct participation, which was admitted to the record as Employer's Exhibit One. Steven Rhoades served as interpreter. 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:**

Was the claimant eligible for unemployment insurance benefits for the period of June 27 through July 31, 2010 by being able and available for work and earning less than his earnings allowance during that period?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 28, 2010. He worked full time, at least Monday through Friday, sometimes Monday through Saturday, doing concrete form work at the employer's business client. He worked approximately 62 hours per week at the rate of \$14.00 per hour.

During the benefit week and work week ending Saturday, July 3, the claimant earned \$692.30. During the benefit week and work week ending Saturday, July 10, the claimant earned \$692.30. During the benefit week and work week ending Saturday, July 18, the claimant earned \$984.20. During the benefit week and work week ending Saturday, July 25, the claimant earned \$782.60. During the benefit week and work week ending Saturday, July 31, the claimant earned \$736.40.

The claimant's last day of work on the assignment was July 30; the business client considered the job completed at that time. The claimant checked back for work with the employer, but no

other assignment was immediately available. He then accepted work with another employer about the first week of August, which went through about the first week of September.

The claimant had previously established an unemployment insurance benefit year effective October 25, 2009. His weekly benefit amount was calculated to be \$459.00. He most recently reopened his claim for unemployment insurance benefits by filing an additional claim effective September 5, 2010.

Agency records indicate that he exhausted his regular unemployment insurance benefits as of the week ending March 13, 2010, and then began receiving emergency unemployment compensation (EUC). As of September 5, 2010, it appears from Agency records that the claimant had a remaining balance of EUC benefits under his first tier of EUC benefits. He continued to file weekly claims through December 11, 2010, but his claim status shows as locked, although there has not been a disqualification decision entered effective after August 1, 2010. It is undetermined if the claimant would be eligible for any additional tiers of EUC benefits, or whether the claimant would be eligible for a second regular benefit year effective October 24, 2010.

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

The issue in this case is whether the claimant is eligible for any unemployment insurance benefits for the period of June 27 through July 31, 2010. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, available for work, and earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant is deemed not able and available for work and not eligible for benefits where the claimant is working sufficient hours so as to be considered fully employed and no longer unemployed. 871 IAC 24.23(23). Further, the unemployment insurance law provides that a partially unemployed claimant can only receive unemployment 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.

For the period of June 27 through July 31, 2010, the claimant was sufficiently employed so would no longer be considered unemployed, and therefore not able and available for further work for those weeks. Also for that period, he was earning wages of more than \$474.00 (his \$459.00 weekly benefit allowance + \$15.00). Therefore, the claimant was not eligible to receive any unemployment insurance benefits for that period.

An issue as to the claimant's claim was locked after August 1, 2010 arose in the review of this hearing. The case will be remanded for an investigation and preliminary determination as to the claimant's eligibility for further EUC benefits or a second regular benefit year. 871 IAC 26.14(5).

#### **DECISION:**

The unemployment insurance decision dated September 21, 2010 (reference 05) is affirmed. The claimant was not able and available for other work as he was fully employed, and not eligible for unemployment insurance benefits for the period of June 27, 2010 through July 31, 2010. The claimant is qualified to receive unemployment insurance benefits as of August 1, 2010, if he was otherwise eligible. The matter is remanded to the Claims Section for

investigation and determination of whether the claimant was otherwise eligible for additional EUC benefits or a second regular benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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