

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN R GAILLARD
Claimant

APPEAL NO. 11A-UI-09403 -VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

**OC:01/02/11
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker - Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated July 15, 2011, reference 03, which held claimant ineligible for unemployment insurance benefits as of June 12, 2011. After due notice, a telephone conference hearing was scheduled for and held on August 8, 2011. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Bryan Gaillard. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available as of June 12, 2011.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant applied for temporary work from the employer. His last assignment was during the week of June 4, 2011, through June 10, 2011. The claimant is actively seeking work and timely requested another temporary assignment from the employer.

The claimant established an original claim for benefits following his termination from Per Mar Security. The claim was established on January 2, 2011. The claimant was terminated on December 31, 2010. The claimant was a full-time employee of Per Mar Security. The wages in his base period include these full-time wages as well as part-time wages from another employer – Nellis Management.

The representative disqualified the claimant from receiving benefits as of June 12, 2011. The representative ruled that the claimant was still employed in his job at the same hours and wages

as in his original contract of hire. The claimant has not worked for the employer since his assignment ended on June 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not disqualified from receiving benefits as of June 12, 2011, for the reason set forth by the representative in the reference 03 decision dated July 15, 2011:

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.

Iowa Code § 96.7-2-a(2) provides:

(4) Supplemental employment.

- a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The administrative law judge notes that the representative considered the claimant to still be employed by the employer and disqualified the claimant on the basis that he was employed at the same hours and wages. The employer in this case is a temporary staffing agency and the claimant's assignment ended on June 10, 2011. This case should have been examined by the agency as a separation due to lack of work. The appeal was established on the able and available issue only. The administrative law judge concludes that the claimant should not be disqualified for the reason set forth by the representative. Even if the claimant is still an employee of the employer, he is not working and has not worked for this employer since June 10, 2011. The claimant is eligible for benefits unless he was separated from this employer for a disqualifiable reason. This case is remanded to the agency to consider whether the claimant should be disqualified on the separation issue. The agency shall also consider whether this employer (259568) should be relieved of charges if benefits are paid to the claimant.

DECISION:

The decision of the representative dated July 15, 2011, reference 03, is modified in favor of the claimant. The claimant is able and available for work and is eligible for partial unemployment insurance benefits effective June 12, 2011. This case is remanded to the agency to determine if the claimant is disqualified on a separation of employment and whether the current employer (259568) is relieved of charges.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs