

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY J ROBINSON
Claimant

APPEAL NO: 09A-UI-14467-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERBAKE
Employer

OC: 02/01/09
Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Corey J. Robinson (claimant) appealed a representative's September 18, 2009 decision (reference 06) that concluded he was not qualified to receive unemployment insurance benefits in connection with Interbake (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2009. The claimant participated in the hearing. The employer received the hearing notice and responded by informing the Appeals Section that no representative would participate, but providing a written statement in lieu of participation. 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:

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 2009. He normally works full time on a Monday through Friday schedule. His current wage is \$13.57; prior to September his wage was \$13.22. There have been a number of periods during 2009 where there has been a full or partial week of layoff from work. As a result, the claimant established an unemployment insurance benefit year effective February 1, 2009. He has received unemployment insurance benefits for weeks where he has not earned at least \$356.00 (his weekly benefit amount of \$341.00 plus \$15.00).

The claimant filed an additional claim effective August 9 and filed a weekly claim for benefits for the week ending August 15, as well as for multiple weeks thereafter. He reported wages for those weeks, although for the weeks ending September 12 and October 17 he reported no wages. There were also weeks where his wages as reported exceeded \$356.00, and no

benefits were paid, including the weeks ending August 29, September 5, September 19, September 26, and October 3.

The employer acknowledges that there have been weeks where some or all of the claimant's regular full time hours have not been available for him due to decreased production demands. As claimed by the claimant, for the week ending October 17 the employer had no hours for the claimant. As claimed by the claimant, for the week ending October 10, the claimant only worked 3.5 hours, the only hours available for him. However, while no work hours were provided for the claimant during the week ending September 12 he did earn 8.0 hours of holiday pay for that week which he did not report.

Other than for the week ending August 22, the claimant worked all hours made available to him by the employer. During that week, the claimant reported wages of \$317.00 reflecting 23.98 hours, essentially three days. As a result, he received a reduced benefit amount of \$109.00. However, the employer had an additional day's worth of work available for the claimant on August 17 which he missed due to personal illness. Had he not been sick, he could have worked sufficient hours to exceed the \$356.00 earnings limit.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Beginning on or about August 9, 2009, there have been weeks in which the employer was not providing the claimant with substantially the same employment as it provided during his base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his additional claim effective August 9, 2009, provided he was otherwise eligible.

In order to be otherwise eligible, the claimant must remain available for work on the same basis as when he was previously working full time and earning the wage credits on which his unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). He must also report all wages attributable to weeks in which he files weekly claims. For the week ending August 22, 2009, the claimant was not eligible for partial unemployment insurance benefits as he was not available to work the hours that would have taken him above his earning limit. For the week ending September 12, he neglected to report the holiday pay attributable to that week.

Other than for the week ending August 22 or any future week in which the claimant is not available to work his regular hours, full or partial benefits are allowed for weeks in which the claimant's wages are below \$356.00. The matter is remanded to the Claims Section for adjustment of the claimant's wage report and benefits allowable for the week ending September 12, and offset of any resulting overpayment.

DECISION:

The unemployment insurance decision dated September 18, 2009 (reference 06) is modified in favor of the claimant. The claimant is eligible for full or partial unemployment insurance benefits for weeks after August 9, 2009 in which his regular full time hours are not made available to him even though he is available for work on the same full time basis. To date, the only week after August 9 in which the claimant is not eligible for full or partial unemployment insurance benefits is the week ending August 22. The matter is remanded to the Claims Section for adjustment of the unreported wage issue and any necessary overpayment offset.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs