

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL ECHEVARRIA
Claimant

APPEAL 18A-UI-10745-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNION TANK CAR COMPANY
Employer

**OC: 09/23/18
Claimant: Respondent (4R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Union Tank Car Company (employer) filed an appeal from the October 25, 2018, reference 02, unemployment insurance decision that allowed benefits based upon the determination Michael Echevarria (claimant) was able to and available for work effective September 23, 2018. After due notice was issued, a telephone conference hearing was held on November 14, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Plant Manager Doug Pabst. HR Manager Lisa Neason represented the employer and was sworn in as a witness but did not provide any testimony. The Employer's Exhibit 1 was admitted into the record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for unemployment insurance benefits effective September 23, 2018. The claimant's weekly benefit amount is \$443.00. He has not filed a weekly continued claim for benefits since opening his original claim.

The claimant was involved in an incident at work on September 26. He was placed on disciplinary suspension beginning Thursday, September 27 through Thursday, October 4. He returned to work on October 5, 2018. The claimant earned gross wages of \$292.34 for the week ending September 29 and \$150.17 for the week ending October 6. The claimant has since returned to work effective October 7 and is working full-time in his normal position.

Whether the reason for the claimant's disciplinary suspension qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is partially unemployed and is able to work and available for work for the two-week period ending October 6, 2018. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code section 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 either of the following apply:

(1) 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.

(2) 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 employer did not provide the claimant with regular full-time hours as contemplated at hire for the two-week period ending October 6, 2018. The claimant earned at his job less than his

weekly benefit amount plus fifteen dollars. The claimant is considered partially unemployed for the two-week period ending October 6, 2018. Benefits are allowed, provided he is otherwise eligible.

The claimant has returned to regular employment effective October 7, 2018 and has not reported any total or partial unemployment since that time.

Whether the reason for the claimant's disciplinary suspension qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

DECISION:

The October 25, 2018, reference 02, unemployment insurance decision is modified in favor of the appellant, in this case the employer. The claimant is partially unemployed effective September 23, 2018 through October 6, 2018. Benefits for that two-week period are allowed, provided the claimant is otherwise eligible.

REMAND:

Whether the reason for the claimant's disciplinary suspension qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn