

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK L ODOR**  
Claimant

**APPEAL NO. 15A-UI-00113-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**OC: 11/30/14**  
**Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

Mark Odor filed a timely appeal from the December 30, 2014, reference 03, decision that denied benefits effective November 30, 2014, based on an Agency conclusion that he was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on January 29, 2015. Mr. Odor participated. Cyndi Mahlstadt represented the employer and presented additional testimony through Kelli Palazzo. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-00114-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO and KCCO).

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since establishing his claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Midwest Professional Staffing, L.L.C., is a temporary employment agency. Mark Odor performed work for the employer in a full-time temporary work assignment at Farm Bureau. He started the assignment on September 18 2014 and completed the assignment on December 18, 2014. Mr. Odor's wage in the assignment was \$12.00 per hour.

Until the week of the Thanksgiving holiday, Farm Bureau had Mr. Odor work 40 hours per week, usually 8:00 a.m. to 4:00 p.m., Monday through Friday. During the week that ended November 29, 2014, Farm Bureau had work for Mr. Odor on Monday-Wednesday,

November 24-26. Farm Bureau was closed and did not have work for Mr. Odor on November 27 and 28, the Thanksgiving holiday and the day after the holiday. In response to the reduction in available work hours, Mr. Odor established a claim for unemployment insurance benefits that was effective November 30, 2014. Workforce Development set Mr. Odor's weekly benefit amount at \$416.00.

During the week of November 30 through December 6, 2014, Farm Bureau did not have work for Mr. Odor on Monday, December 1, 2014, but had work for him for the rest of the week. During the week of December 7-13, 2014, Farm Bureau did not have work for Mr. Odor on December 12, 2014, but otherwise had work for him that week. During the week of December 14-20, 2014, Farm Bureau did not have work for Mr. Odor on December 15. Mr. Odor worked a full shift on December 16. Mr. Odor was absent due to a lack of transportation. On Thursday, December 18, Farm Bureau had four hours of work for Mr. Odor and then notified him that the assignment was ended.

Midwest Professional Staffing pays employees weekly, but utilizes a Saturday through Friday pay period. For the pay period of November 22-28, 2014, the employer paid Mr. Odor \$249.00 for 20 hours and 45 minutes of work. That pay period most closely corresponds to the benefit week ending November 29, 2014, when Mr. Odor had not yet filed his claim for benefits. For the pay period of November 29-December 5, 2014, the employer paid Mr. Odor \$315.00 for 26 hours and 15 minutes of work. That pay period most closely corresponds to the benefit week that ended December 6, 2014 and Mr. Odor reported \$315.00 in wages for that week. For the pay period of December 6-12, 2014, the employer paid Mr. Odor \$357.00 for 29 hours and 45 minutes of work. That pay period most closely corresponds to the benefit week that ended December 13, 2014 and Mr. Odor reported \$351.00 in benefits for that week. For the pay period of December 13-19, 2014, the employer paid Mr. Odor \$96.00 for 8 hours of work. That week most closely corresponds to the benefit week that ended December 20, 2014 and Mr. Odor reported \$96.00 in wages for that week. For those three weeks, Mr. Odor received \$205.00, \$169.00 and \$416.00 in unemployment insurance benefits respectively. During each of those three weeks, Mr. Odor performed all the work the employer had available for him, with the exception of December 17.

On Monday, December 22, 2014, Mr. Odor notified Midwest Professional Staffing that the assignment had ended. Mr. Odor asked the employer at that time whether the employer had a new assignment available, but the employer did not have a new assignment at that time.

Mr. Odor continued his claim for benefits through the benefit week that ended December 27, 2014. Mr. Odor did claim benefits for the week that ended January 3, 2015, during which he traveled out of state on vacation. Mr. Odor reactivated his claim on January 4, 2015 and then continued the claim through the benefit week that ended January 24, 2015. Mr. Odor then discontinued the claim because he returned to Farm Bureau for a new, full-time temporary work assignment.

During each of the weeks for which Mr. Odor filed a weekly claim, he engaged in a bonafide search for new work. Mr. Odor made least two job contacts per week and followed up on any and all leads provided by Midwest Professional Staffing.

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

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".

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. Iowa Code Section 96.19(38)(b).

The weight of the evidence indicates that Mr. Odor was able and available for work and engaged in an active and earnest search for new employment during each of the weeks for which he claimed benefits between November 30, 2014 and January 24, 2015. During the three-week period of November 30, 2014 through December 20, 2014, Mr. Odor was partially unemployed. With the exception of the week that ended January 3, 2015, for which Mr. Odor did not make a claim for benefits, Mr. Odor was eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

## **DECISION:**

The December 30, 2014, reference 03, decision is reversed. The claimant was able and available for work, but partially unemployed, during the three-week period of November 30 through December 20, 2014. The claimant is eligible for benefits for those weeks, provided he is otherwise eligible. During the weeks that ended December 27, 2014, and January 10, 17 and 24, 2015, the claimant was able and available for work, actively and earnestly seeking new employment and eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs