

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TODD A MARTIN**  
Claimant

**PJ IOWA LC**  
Employer

**APPEAL NO. 14A-UI-07691-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/22/14**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 16, 2014, reference 02, that concluded he was still working part time when work was available and was considered able to and available for work. A telephone hearing was held on August 19, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Mark Hauder participated in the hearing on behalf of the employer.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked part time as an in-store production employee from August 21, 2012 to February 22, 2014. During that period, the claimant was working about 25 to 30 hours per week. He stopped working for the employer from February 22, 2014 to March 20, 2014. He said that he was leaving to take another job, but there is no evidence that he worked in another job because no other employer reported wages for the claimant.

The claimant contacted the employer near the end of March and asked if he could pick up some shifts. He did not specify how much he wanted to work and the employer believed that the claimant was still working for another employer. The employer scheduled the claimant for two or three short shifts during the week, usually during the dinner rush. The employer understood that this was the claimant's availability. There were several instances when the claimant did not work all his scheduled hours. The claimant's rate of pay was \$9.25. The claimant returned to work in March 2014 and the employer provided him work in accord with what it understood was his availability.

The claimant filed a new claim for unemployment insurance benefits effective June 22, 2014. His weekly benefit amount was determined to be \$180.00 which was based upon his employment with the employer during the third quarter of 2013.

During the week of June 22 to 28 the claimant was scheduled to work for three hours per shift on June 24, 25, and 27. He worked 7.8 hours for wages of \$72.15.

During the week of June 29 to July 5 the claimant was scheduled to work for three hours on July 3 and four hours on July 5. He worked 6.9 hours for wages of \$63.83.

During the week of July 6 to 12 the claimant was scheduled to work for three hours per shift on July 10 and July 11. He worked 8.1 hours for wages of \$74.93.

During the week of July 13 to 19 the claimant was scheduled to work for four hours per shift on July 17 and 19 and three hours on July 18. He worked 2.23 hours for wages of \$20.63 and was absent without notice on July 18 and 19.

He was later discharged, which is the subject of another decision.

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

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective June 22, 2014.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this case, the claimant is not eligible for partial unemployment insurance benefits. The claimant left employment for over a month. When he was rehired he did not specify how much he wanted to work and the employer based its scheduling on what it understood was the claimant's availability. The claimant cannot claim that the employer reduced his hours under the facts of this case.

The employer would not be subject to charge for benefits paid to the claimant through the week ending July 19, 2014 because it did not reduce the claimant's hours. It rehired him back and scheduled him for the hours it understood he was available.

**DECISION:**

The unemployment insurance decision dated July 16, 2014, reference 02, is reversed. The claimant is ineligible for benefits from June 22 through July 19, 2014. The issue of whether the claimant was overpaid benefits was not listed on the hearing notice. That matter is remanded to the Agency to determine.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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