

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J STEPHENS

Claimant

D & S SERVICES

Employer

APPEAL NO: 11A-UI-02692-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/09/11

Claimant: Respondent (4)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment
Section 96.7-2-a – Relief of Charges

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 24, 2011, reference 01, that held claimant was still employed part time whenever work is available. Claimant is eligible for benefits effective January 9, 2011, and the employer's account is not relieved of charges. A telephone hearing was held on March 29, 2011. The claimant participated. David Mengwasser, Owner, participated for the employer.

ISSUES:

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

The issue is whether the employer should be relieved of charges.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working a part-time labor job for the employer in June 2003. The claimant had recently started work with the Iowa Department of Natural Resources that is his primary job. The employer agreed to work around his DNR employment. When the claimant experienced a seasonal layoff from the DNR, the employer would try to increase his hours though the employer would also experience a work slowdown in the winter.

When claimant filed a December 27, 2009 unemployment claim that was after his DNR seasonal layoff, the department issued a decision May 20, 2010 that allowed him benefits and relieved the employer from liability for benefit charges.

The claimant filed his recent claim after his DNR seasonal layoff when worked slowed down for the employer in January 2011. The claimant experienced several weeks in January/early

February when no work available, but he has reported part-time wages of \$104.00 a week since the middle part of February and thereafter. The claimant has worked all hours made available to him, and he is expecting a recall with the DNR in May or June of this year.

REASONING AND CONCLUSIONS OF LAW:

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 section 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.

The administrative law judge concludes the claimant was laid off from his primary job at the DNR in October 2010, and he has continued his part-time job for the employer through the date of this hearing. Claimant is eligible for full benefits in any week when there is no work available and partial benefits when he has some earnings. The employer's account is not charged.

The claimant has worked the same pattern of employment from 2003 to the present. His primary job is with the DNR and he works part time with the employer. When he is laid off from the DNR for the season, he is available to work more hours for the employer until the winter

months when work becomes slow. As in May 2010, the department decision that allows claimant benefits is correct, and the employer's account is not charged.

DECISION:

The department decision dated February 24, 2011, reference 01, is modified. The claimant is eligible for benefits effective January 9, 2011, and the employer's account is not charged.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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