

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVEY R BROWN
Claimant

APPEAL NO: 12A-UI-01331-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDCAN LLC
Employer

**OC: 12/11/11
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Availability for Work

STATEMENT OF THE CASE:

The employer appealed a representative's February 2, 2012 determination (reference 02) that held the claimant eligible to receive benefits and the employer's account subject to charge. A hearing was scheduled on February 21, 2012. The claimant did not respond to the hearing notice or participate in the hearing. Carl Annicchiarco appeared on the employer's behalf. Since the claimant had not filed any weekly claims and has to reopen his claim to receive claims, the employer agreed a decision could be made based on the administrative record, and the law. The administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

After the claimant established his claim during the week of December 11, 2011, he has not filed any weekly claims. The claimant still works for the employer. At his request, the claimant works Saturday and Sunday for the employer because he has another job.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). Since the claimant has not filed any weekly claims, the claimant is not required to establish his eligibility to receive benefits. The representative's February 2, 2012 determination has no legal consequence. Why - because the claimant has not filed any weekly claims, it is not necessary to decide the claimant's eligibility to receive benefits until he actually files weekly claims. It is premature to decide if the employer's account will be subject to charge when the claimant still works part time and has not filed any weekly claims. The employer's account is not charged at this time because the claimant has not received any benefits. Before the claimant can receive benefits, he must reopen his claim. If this happens, the employer will receive another notice of claim and can protest charges against its account then.

DECISION:

The representative's February 2, 2012 determination (reference 02) is modified in the employer's favor. To decide the issues the representative addressed in the February 2 determination is premature because the claimant has not filed any weekly claims since he established his claim for benefits. Since availability is an issue that should be addressed each week, it is not necessary to do so in this case when the claimant has not filed any weekly claims. At this time, the employer's account has not been charged and is **NOT** subject to charge. If the claimant reopens his claim, the employer will receive a notice of claim and will have the opportunity to protest charges to its account at that time.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs