

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON R CHRISTENSEN
Claimant

APPEAL NO. 15A-UI-14011-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIONSON & SONS INC
Employer

**OC: 11/22/15
Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 14, 2015, reference 01, decision that allowed benefits to the claimant effective November 22, 2015, provided the claimant was otherwise eligible, based on an Agency conclusion that the claimant was able to work and available for work, but on a short-term layoff. Claimant Shannon Christensen participated. Fred Schroeder represented the employer. Exhibits One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and weekly wages reported by the claimant (DBRO and KCCO).

ISSUES:

Whether Mr. Christensen has been able to work and available for work since he established the claim for unemployment insurance benefits that was effective November 22, 2015.

Whether Mr. Christensen has been temporarily laid off or partially unemployed since he established the claim for benefits that was effective November 22, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shannon Christensen commenced his full-time employment with Monson & Sons, Inc., in June 2014 and continues in the employment. Mr. Christensen works as a truck driver. Mr. Christensen's primary driving duties involve hauling rock and asphalt for which the employer pays a wage of \$20.00 or \$21.00 per hour depending on the type of truck being used. In the winter months, the employer shifts Mr. Christensen to hauling seed corn for Pioneer and pays Mr. Christensen by the mile.

Mr. Christensen established a claim for unemployment insurance benefits that was effective November 22, 2015. Workforce Development calculated Mr. Christensen's weekly benefit amount to be \$529.00. For the week ending November 28, 2015, Mr. Christensen reported \$178.00 in wages. For that week, Workforce Development disbursed a reduced benefit amount of \$483.00 to Mr. Christensen.

During the week of November 22-28, 2015, the employer had less than nine hours of work for Mr. Christensen. Mr. Christensen was available for additional work, but the employer did not offer any additional work. Mr. Christensen did not refuse any work. The employer shut down operations for the Thanksgiving holiday and the Friday that followed.

During the weeks that followed, the employer has had seed corn hauling work for Mr. Christensen and Mr. Christensen has made himself available for that work. Mr. Christensen has continued to make weekly claims and most recently made a claim for the week ending January 9, 2016. However, for the weeks between November 29, 2015 and January 9, 2016, Mr. Christensen has reported wages ranging from \$732.00 to \$1,093.00 and has not received unemployment insurance benefits.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(23) and (29) provide:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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).

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. Iowa Code section 96.19(38)(c).

The weight of the evidence establishes that Mr. Christensen was partially unemployed during the week of November 22-28, 2015. Mr. Christensen made himself available for all work the employer had for him that week, but the employer has less than nine hours of work for him. Mr. Christensen is eligible for benefits for the week that ended November 28, 2015, provided he meets all other eligibility requirements. The employer's account may be charged for the benefits paid to Mr. Christensen for that week. The evidence indicates that since the week that started November 29, 2015, Mr. Christensen has been working increased hours and receiving wages that exceed his weekly benefit amount by more than \$15.00. Accordingly, Mr. Christensen has not been partially unemployed since November 29, 2015. In addition, since the week that started November 29, 2015, Mr. Christensen has been working to such an extent that he does not meet the "availability" requirement to be eligible for unemployment insurance benefits. For these reasons, benefits are denied effective November 29, 2015. In the event that the amount of available work again decreases, Mr. Christensen may reapply for benefits during the week he wishes to recommence receiving benefits.

DECISION:

The December 14, 2015, reference 01, decision is modified as follows. The claimant was able and available for work, but partially unemployed during the week that ended November 28, 2015. The claimant is eligible for benefits for that week provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for the week ending November 28, 2015. Effective November 29, 2015 the claimant has not been partially unemployed and has been working to an extent that he does not meet the "availability" requirement to be eligible for unemployment insurance benefits. Accordingly, benefits are denied effective November 29, 2015. In the event that the amount of available work again decreases, the claimant may reapply for benefits during the week he wishes to recommence receiving benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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