

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN S KNIGHT
Claimant

APPEAL NO. 09A-UI-17628-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANDERSON-ERICKSON DAIRY CO
Employer

OC: 10/25/09
Claimant: Respondent (4)

Iowa Code Section 96.19(38) - Temporary and/or Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 10, 2009, reference 02, decision that allowed benefits based on an Agency conclusion that the claimant was discharged on October 25, 2009 for no disqualifying reason. A hearing was scheduled for January 4, 2010 at 1:00 p.m. and both parties were notified by notice mailed on November 24, 2009. Claimant Steven Knight did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Employer provided the telephone number for the hearings, but neither the employer representative nor a substitute representative was available at that number at the time the hearing. A decision is being entered based on the contents of the administrative file and the employer's appeal letter, which the administrative law judge has received into the record as Exhibit One.

ISSUE:

Whether the claimant in fact separated from the employment on or about October 25, 2009.

Whether the claimant was able to work and available for work during the benefit week that ended October 31, 2009.

Whether the claimant was temporarily unemployed or partially unemployed during the week that ended October 31, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Knight started working for Anderson-Erickson Dairy Company in 1993 and continues as an employee at this time. On October 22, 2009, the employer sent Mr. Knight a notice that he was being discharged from the employment for excessive absenteeism. This was after Mr. Knight had missed work from October 18-22, 2009 for reasons that were unknown to the employer at the time. On October 23, Mr. Knight contacted the employer and requested FMLA paperwork be sent to his doctor via fax. On October 28, 2009, the employer received the completed FMLA application paperwork and notified Mr. Knight that the termination notice was rescinded.

Mr. Knight returned to his duties on October 28, 2009. The employer made the reinstatement retroactive to October 18, 2009.

Mr. Knight established a claim for unemployment insurance benefits that was effective October 25, 2009 and claimed benefits only for the week that ended October 31, 2009. For that week Mr. Knight reported \$290.00 in wages and received \$238.00 in regular unemployment insurance benefits as well as an additional \$25.00 in federal stimulus benefits.

REASONING AND CONCLUSIONS OF LAW:

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 available evidence establishes that Mr. Knight was temporarily unemployed and partially unemployed during the benefit week that ended October 31, 2009. The weight of the evidence indicates that as of Saturday, October 23, Mr. Knight had contacted the employer in an attempt to return to the employment, but that the employer made his return contingent upon receipt of an FMLA leave application and approval of that application to cover the absences that had occurred from October 18-22. The weight of the evidence indicates that Mr. Knight continued off work until his doctor provided a completed FMLA application to the employer, the employer approved the application, and the employer reinstated Mr. Knight to his duties on October 28. The weight of the evidence indicates that Mr. Knight was able to work and available for work during the majority, if not the entirety, of the week that ended October 31, 2009 and returned to the employment midway through that week. Mr. Knight was eligible for the benefits he received for the week ending October 31, 2009, provided he was otherwise eligible. The employer's account may be charged for those benefits. Because Mr. Knight returned to the employment during the week that ended October 31, 2009, his eligibility for benefits under the theory of partial and/or temporary unemployment ended with the benefit week ending October 31, 2009.

DECISION:

The Agency representative's November 10, 2009, reference 02, decision is modified as follows. The claimant was temporarily and partially unemployed during the week that ended October 31,

2009 and was eligible for benefits for that week, provided he was otherwise eligible. The employer's account may be charged for the benefits paid to the claimant for that week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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