

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BYRON WILLINGHAM**  
Claimant

**APPEAL NO: 09A-UI-18858-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEAVER ENTERPRISES LTD**  
Employer

**OC: 08/23/09**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Byron Willingham (claimant) appealed an unemployment insurance decision dated December 8, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he does not meet the availability requirements of the law. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2010. The claimant participated in the hearing with Attorney Luke Guthrie. The employer participated through Terry Moffit, Director of Operations. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is working the same hours and wages as in his original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as an on-call team member for this Kentucky Fried Chicken restaurant on September 13, 2008. He was never guaranteed a minimum number of hours and the amount of hours he works depends on various factors including his abilities and the employer's business needs. The claimant worked more hours at the time of hire when he was in training. His availability is limited due to transportation issues.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

Iowa Code § 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".

871 IAC 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.

The claimant was hired as an on-call team member. He is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. His availability could also be limited due to transportation issues. The claimant does not meet the availability requirements of the law and is disqualified from receiving unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated December 8, 2009, reference 01, is affirmed. The claimant does not qualify for unemployment insurance benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs