

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN D LONGTIN

Claimant

APPEAL NO. 10A-UI-04364-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOTOR INN OF WEBSTER CITY LLC

Employer

OC: 02-07-10

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 10, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 6, 2010. The claimant did participate. The employer did participate through (representative) Randall Denning, General Manager and Part Owner, and David Clark, Salesman. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant employed at the same hours and wages as at the time of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a salesperson and finance and insurance back up person full time beginning June 8, 2009 through February 18, 2010 when he voluntarily quit his job. During the entire time of his employment neither the claimant's hours nor his wages were reduced.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 working the same hours and wages as when he was hired and thus cannot be considered to be partially unemployed. Accordingly, benefits are denied.

DECISION:

The March 10, 2010, reference 02, decision is affirmed. The claimant is not able to work and available for work effective February 7, 2010. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css