

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES O HARMON**  
Claimant

**APPEAL NO. 14A-UI-00114-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEDEX FREIGHT EAST INC**  
Employer

**OC: 11/24/13**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, James Harmon, filed an appeal from a decision dated December 24, 2013, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 28, 2014. The claimant participated on his own behalf. The employer, Fedex, participated by Service Center Manager Nathaniel Dixon.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The claimant was removed from his job as a full-time driver with FedEx and offered a part-time job as a dock worker. He accepted the job without any guarantee of a minimum number of hours per day, week or pay period. He continues in that capacity as of the date of the hearing.

**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 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 accepted the part-time job offered to him without any guarantee of any minimum hours or regular schedule. Under the provisions of the above Administrative Code section, he is working at the same hours and wages as in the contract of hire he accepted and is not considered able and available for work.

**DECISION:**

The unemployment insurance decision dated December 24, 2013, reference 04, is affirmed. James Harmon is not eligible for benefits as he is not able and available for work.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css