

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAJUAN L MORROW**  
Claimant

**APPEAL NO. 16A-UI-04496-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 03/13/16**  
**Claimant: Respondent (2R)**

Section 96.4-3 – Able and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Still Employed Part Time/On Call

**STATEMENT OF THE CASE:**

L A Leasing, the employer, filed a timely appeal from the representative's decision dated April 6, 2016, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning March 13, 2016, finding that the claimant was still employed part time working on call for L A Leasing. After due notice was provided, a telephone hearing was held on May 2, 2016. Although duly notified, the claimant did not respond to the Notice of Hearing and did not participate. The employer participated by Ms. Colleen McGuinty, UI Benefit Administrator and Ms. Kathy Hutchinson, Area Manager, Monticello, Iowa office.

**ISSUE:**

At issue is whether the claimant is still employed part time or working on call for this employer.

**FINDINGS OF FACT:**

The administrative law judge, having considered all the evidence in the record, finds: Mr. JaJuan Morrow was employed by L A Leasing beginning August 24, 2015. Mr. Morrow's last assignment through L A Leasing began on October 8, 2015. The claimant was assigned to work as a general laborer/machine operator for the Orbis Company at the rate of \$11.00 per hour. His contact person with L A Leasing was Ms. Kathy Hutchinson.

Mr. Morrow's employment with L A Leasing came to an end on February 8, 2016, and the claimant was not employed part time, on call or in any other capacity by L A Leasing after that date. The employer asserts that Mr. Morrow chose to leave his employment at that time, although work continued to be available to him. The claimant does not continue to be employed and has not been re-employed by L A Leasing since February 8, 2016.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether JaJuan Morrow is eligible to receive unemployment insurance benefits chargeable to the account of L A Leasing because he is still employed part time or on call working whenever work is available. He is not.

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 § 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(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 evidence in the record establishes that JaJuan Morrow is not employed by L A Leasing part time, on call or in any other capacity since February 8, 2016. The claimant therefore, is not eligible to receive partial unemployment insurance benefits chargeable to L A Leasing's account beginning March 13, 2016. The evidence in the record clearly establishes that Mr. Morrow does not continue to be employed by L A Leasing and is not partially unemployed for any reason related to L A Leasing.

The employer asserts that Mr. Morrow voluntarily quit his employment with L A Leasing on February 8, 2016, however, the administrative law judge makes no finding as to whether the claimant's job separation was disqualifying, because the issue of a job separation was not included in the Notice of Hearing as potential issues for the hearing scheduled on May 2, 2016, thus the claimant was not given adequate notice that the issue of whether the job separation itself was a disqualifying job separation.

The issue of whether the claimant had a disqualifying job separation from L A Leasing is remanded to the Claims Division for an investigation and the issuance of an appealable determination on the job separation issue.

Because the claimant is not partially unemployed from L A Leasing, he is not partially unemployed within the meaning of the law, does not meet the availability requirements to receive partial unemployment from this employer for benefits based upon wage credits from this employer. Accordingly, the claimant is disqualified for unemployment insurance benefits until he

establishes that he is able and available for work and actively seeking employment and that there are no other issues that disqualify him from the receipt of unemployment insurance benefits.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Because the issue of a potential overpayment of unemployment insurance benefits was not included on the Notice of Hearing, the administrative law judge will remand the matter of whether the claimant has been overpaid unemployment insurance benefits to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether the claimant is liable to repay the overpayment to Iowa Workforce Development. .

**DECISION:**

The representative's decision dated April 6, 2016, reference 01, is reversed. The claimant is not employed part time or working on call for L A Leasing and has not met the availability requirements to receive partial unemployment insurance benefits based upon charging that employer's account. The claimant is disqualified for unemployment insurance benefits until he establishes that he is able and available for work and actively and earnestly seeking re-employment. The issue of whether the claimant had a previous disqualifying job separation and whether the claimant has been overpaid unemployment insurance benefits is remanded to the Claims Division for investigation and the issuance of appealable determinations.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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