

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TREVOR S FLOREN
3495 PENN AVE APT 9
DUBUQUE IA 52002

HILLCREST FAMILY SERVICES
2005 ASBURY RD
DUBUQUE IA 52001 3042

Appeal Number: 05A-UI-02774-DWT
OC: 01/30/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability to Work

STATEMENT OF THE CASE:

Trevor S. Floren (claimant) appealed a representative's March 11, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was not willing to work the number of hours that his occupation required. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2005. The claimant participated in the hearing. Julie Holdridge, the director of human resources, and Patty Thill, the program supervisor appeared on the employer's behalf. 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:

Should the claimant be ineligible to receive unemployment insurance benefits when he is not available to work for an on-call employer because his "regular employer" wants him to be available when this employer calls him to work?

FINDINGS OF FACT:

The claimant started working full-time for the employer on April 13, 2004. The claimant was also working for another employer. Working two full-time jobs became too much for the claimant. On October 2, 2004, the claimant resigned his full-time job with the employer and asked for continued employment as an on-call employee.

Many times when the employer contacted the claimant to work some hours after October, the claimant declined because his full-time job required him to be available to work when it snowed. Finally on March 15, 2005, the claimant told the employer there was no need to call him any longer because he was working at his full-time job, a landscaping business.

REASONING AND CONCLUSIONS OF LAW:

A claimant who has been separated from his "regular employer" and who remains working for a part-time employer, is eligible to receive unemployment insurance benefits as long as the claimant remains employed with the part-time in the same manner as the claimant worked during his base period. 871 IAC 23.43(4).

The facts establish the claimant quit his full-time employment with the employer because he had another job, another full-time job. For unemployment insurance purposes, the employer's account will not be charged for benefits based on the wage credits the claimant earned from April 13 to October 2, 2004, because the claimant discontinued his full-time job for other employment. Iowa Code §96.5-1-a. During the remainder of the claimant's base period, the claimant worked as an on-call employee for the employer. Since the claimant's employment with the employer as of October 2, 2004 amounts to supplemental employment, the employer's account will not be charged for benefits based on wage credits the claimant earned since October 2, 2004.

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code §96.4-3. Since the claimant remained employed with his full-time employer and he had to be available to work at the last minute when this employer contacted him, the fact the claimant was unable to work hours the employer asked him to work as an on-call employee in this case does not make the claimant ineligible to receive unemployment insurance benefits. With the facts of this case, 871 IAC 24.23(18) and (20) do not apply and the claimant is available to work. Therefore, as of January 30, 2005, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 11, 2005 decision (reference 01) is reversed. Under the facts of this case, the claimant is able to and available for work. The claimant is eligible to receive unemployment insurance benefits as of January 30, 2005. The employer's account will not be charged.

dlw/pjs