

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

OSCAR E HERNANDEZ
Claimant

APPEAL NO. 15A-UI-10195-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 08/09/15
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
IAC r. 871-24.23(26) – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

Oscar Hernandez, the claimant, filed an appeal from a representative's decision dated September 2, 2015, reference 01, which concluded the claimant as not eligible to receive partial unemployment insurance benefits as of August 9, 2015, because the claimant would be employed at the same hours and wages as in the original agreement of hire. After due notice was provided, a telephone conference hearing was held on September 24, 2015. Mr. Hernandez participated personally. The University of Iowa participated by Ms. Mary Eggenburg, Benefits Specialist.

ISSUE:

At issue is whether Mr. Hernandez is still employed in his current employment with the University of Iowa at the same hours and wages as agreed upon at the time of hire.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Mr. Hernandez, the claimant, filed an unemployment insurance claim effective August 9, 2015 for partial unemployment insurance benefits in anticipation that the part-time employment that he had most recently accepted with The University of Iowa would not provide sufficient pay to meet his family needs.

Mr. Hernandez' most recent employment with the University of Iowa was to begin on August 10, 2015, as a part-time research assistant working 20 hours per week at the rate of \$25.00 per hour. As anticipated, Mr. Hernandez began his most recent employment with The University of Iowa on August 10, 2015 as a part-time employee working 20 hours per week at the rate of \$25.00 per hour. At the time of the hearing in this matter, Mr. Hernandez continues to be employed by The University of Iowa working part time as a research assistant. Mr. Hernandez works 20 hours per week and continues to be paid at the rate of \$25.00 per hour.

REASONING AND CONCLUSIONS OF LAW:

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 Mr. Hernandez was most recently hired by The University of Iowa as a part-time research assistant working 20 hours per week at the rate of \$25.00 per hour. Mr. Hernandez is still employed in the same part-time position that was agreed upon at the time that he was hired. Mr. Hernandez understood and agreed that his working hours with The University of Iowa would be 20 hours per week at the rate of \$25.00 per hour. That has not changed.

Where a claimant is still employed in a part-time job at the same hours and wages as agreed on in the original agreement of hire and is not working on a reduced workweek basis different from the agreement of hire, the claimant cannot be considered to be partially unemployed with this employer. Mr. Hernandez continues to be employed at least 20 hours per week at the agreed-upon rate per hour.

DECISION:

The representative's decision dated September 2, 2015, reference 01, is affirmed. The claimant is disqualified from the receipt of partial unemployment insurance benefits. Mr. Hernandez continues to be employed at the same hours and wages as agreed upon at the time of hire and is not available for other employment based upon his part-time employment with this employer.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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