

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROYAL N WELLS

Claimant

APPEAL NO. 16A-UI-00462-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEANING CONNECTION INC

Employer

OC: 03/01/15

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 8, 2016, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on February 3, 2016. Claimant participated personally. Employer participated by Lisa Mart and Greg Bower. Claimant's Exhibits A-C were admitted into evidence.

ISSUE:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

FINDINGS OF FACT:

The claimant worked for Cleaning Connection, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire until January 14, 2016. Claimant also has other wages in the base period history. Claimant's last day of work was January 14, 2016. Claimant ended his employment to take another job with greater hours.

Claimant and all other similarly situated employees of employer were hired to work part time and employed for jobs cleaning construction sites on an as-needed basis. Claimant was late for work on multiple occasions during his periods of employment, and as claimant was late, other people had been assigned to work jobs prior to claimant arriving for work. On multiple occasions those jobs went over multiple days, and when claimant was not on a crew that started a job, he could not finish that job. Claimant additionally did not wish to work on New Year's Eve or December 23, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

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".

The reduction of claimant's hours occurred as a direct result of claimant not showing for work in a timely basis and calling off from work or not showing up for work. Benefits are denied.

DECISION:

The January 8, 2016, reference 05, decision is affirmed. The claimant is not partially unemployed and benefits are denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs