

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAWN A SHILL
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 15A-UI-04716-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/15
Claimant: Appellant (1/R)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 8, 2015 (reference 02) unemployment insurance decision that denied benefits based upon the claimant working enough hours to be considered employed for unemployment benefits purposes. After due notice was issued, a telephone conference hearing was scheduled to be held on May 28, 2015. The claimant participated.

ISSUE:

Was the claimant still employed at the same wages and hours for the week of March 22, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant performed work for his employer during the week of March 22, 2015; before separation occurred on March 26, 2015. The claimant performed work on Monday, Wednesday, and part of the day Thursday before separation occurred. The claimant was to be paid \$150 per car sold each week and sold three cars his final week of work. There is some dispute if the claimant was paid that rate, and on what day it was paid, but for purposes of earning and performing work, he did work his normal hours and at the same rate of pay until separation occurred at approximately 4:00 p.m. on March 26, 2015.

Agency records reflect the claimant reported \$1 in wages for the week of March 22, 2015 through March 28, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages for the week of March 22, 2015, and therefore was not able and available.

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".

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 claimant worked full shifts on Monday and Wednesday before being discharged during his shift on Thursday. The claimant sold three cars during that week of employment and would have earned \$150 per car sold. Because the claimant worked three days of his five day shift, he is considered employed during this week, and effectively removed from the labor market because he would not have been available for other employment while still working and performing work. Therefore, the claimant does not meet the availability requirement, and is ineligible for this week only. Benefits are denied for the week of March 22, 2015; as the claimant was not available.

During the week of March 22 through March 28, 2015, the claimant reported \$1 in wages when filing his unemployment claim. The claimant would have earned \$450 before any deductions. Wages reported by the claimant must be the wages earned for the week, not the wages paid.

DECISION:

The April 8, 2015 (reference 02) decision is affirmed. The claimant is not able to work and available for work effective March 22 through March 28, 2015. Benefits are denied.

REMAND:

The wages issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a follow investigation and to determine if a recalculation of benefits is needed.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/can