

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVOR PRICE

Claimant

APPEAL NO: 08A-UI-06189-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLIS MOBILE HOME TRANSPORT INC

Employer

**OC: 06-01-08 R: 01
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

Section 96.19-38 – Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 27, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2008. The claimant participated in the hearing. Larry Ellis, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and whether he is unemployed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time general laborer for Ellis Mobile Home Transport May 19, 2008, and remains employed by that organization. The employer is a construction company and its hours depend on the weather and hours are not guaranteed. During the week of June 1 through June 7, 2008, he worked 27 hours due to the weather.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is employed and is not able to work and available for work

Iowa Code section 96.19-18-a provides:

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection

prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:. . .

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant is working full-time for Ellis Mobile Home Transport. His hours fluctuate to some degree depending on the weather. Consequently, the administrative law judge concludes he is employed. The second issue is whether the claimant is able and available for work. Because the claimant is working for Ellis full-time except when the weather is bad, he is not able and available for other work as he is unduly limited for other work by his full-time job. Accordingly, benefits are denied.

DECISION:

The June 27, 2008, reference 02, decision is affirmed. The claimant is employed but is not able to work and available for work effective May 19, 2008, when he accepted full-time work. Consequently, benefits must be denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs