

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABEL ASTOCONDOR
Claimant

APPEAL NO: 15A-UI-07365-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 05/10/15
Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 17, 2015, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 31, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Colleen McGuinty, Unemployment Benefits Administrator and Julie Thill, Facilitator for Nordstrom Distribution for Sedona, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part time Nordstrom's associate for Sedona March 16, 2015 and worked through July 9, 2015, when he left to accept other employment.

At the time of hire the claimant was told the assignment was day to day scheduling. The client had a meeting at 12:30 p.m. every day and notifies the employer of how many employees it will need that evening and informs the employer by 2:00 p.m. The employer makes a schedule and calls employees to let them know if work is available that evening. Employees fill out an availability form each week.

During the week ending May 16, 2015, the claimant worked 7.7 hours May 12, 2015, and was not available May 14, 2015. The employer did not have other work available for the claimant that week. The claimant reported his wages for May 12, 2015, and received partial unemployment insurance benefits. During the week ending May 23, 2015, the claimant worked 3.77 hours May 18, 2015, and was not available May 21, 2015. The employer did not have other work available for the claimant that week. The claimant reported his wages for May 18, 2015, and received benefits for that week. During the week ending May 30, 2015, the

employer had work available May 27, 2015, but not any other day that week. It appears the claimant did not work May 27, 2015, but it is not clear whether he was available on that date. The employer did not have work available from May 28 through May 31, 2015. That was the last week the claimant received any benefits because he voluntarily left to accept other employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire.

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 was hired as a part-time associate and assigned to work at Nordstrom's. Nearly all of the dates for which the employer is questioning the claimant's availability occurred after the claimant stopped filing for and receiving benefits as the last week he received benefits was the week ending May 30, 2015. The employer cited May 14 and 21, as dates that the claimant was not available in May 2015. The other dates for the weeks ending May 16 and May 23, 2015, the claimant reported his wages for the days he worked. The employer did not have work available the other dates preceding May 30, 2015. After that month, the claimant was not available when called to work the day of his shift June 4, 5, 10, 11 and 18, 2015. However, the claimant did not claim benefits in June 2015.

Under these circumstances, the administrative law judge concludes the claimant is eligible for benefits for the weeks ending May 16, 23 and 30, 2015, as he was able and available for work the majority of each of those weeks and did report the wages he received.

DECISION:

The June 17, 2015, reference 03, decision is affirmed. The claimant was not employed at the same hours and wages as in his original contract of hire for the three weeks ending May 30, 2015, and therefore is eligible for benefits effective the week ending May 16, 2015.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/mak