

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KERRY S HAYES
APT 2 206 S 4TH
GUTHRIE CENTER IA 50115

KDMM ENTERPRISES LLC
TUFFY AUTO SERVICE CENTER
1685 SE DELAWARE AVE
ANKENY IA 50021-4593

Appeal Number: 04A-UI-02483-B4T
OC: 02/23/03 R: 01
Claimant: Respondent (1R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Whether claimant is able and available for work
Section 96.4-3 – Whether claimant is still employed at same hours and wages

STATEMENT OF THE CASE:

An appeal was filed on behalf KDMM Enterprises Inc., operating Tuffy Auto Service Center appealed from an unemployment insurance decision dated February 16, 2004, reference 03, that held, in effect, Kerry S. Hayes was still employed part-time or working on call whenever work was available. Unemployment insurance benefits were allowed beginning January 25, 2004 provided the claimant met all other eligibility requirements.

A consolidated telephone conference hearing was scheduled and held on April 1, 2004. Kerry S. Hayes participated. Ken Moomey, Owner participated on behalf of KDMM Enterprises, LLC.

Official notice was taken of the unemployment insurance decision bearing, reference 02, together with the pages attached thereto (6 pages in all).

FINDINGS OF FACT:

Ken Moomey, Owner, of KDMM Enterprises, LLC, employed Kerry S. Hayes as a part-time auto service technician on or about November 19, 2003. The claimant worked on a part-time basis until on or about December 8, 2003 when he was placed full time by the Owner Ken Moomey. The claimant worked approximately seven weeks as a full time employee and on or about January 26, 2004, the claimant was reduced to a part-time employee. Once again because of his alleged poor job performance and attendance record.

The claimant continued in this position as a part-time employee until February 13, 2004, when he was discharged.

The last incident, which triggered the discharge, was discovered on or about February 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 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 evidence in the record clearly establishes that the claimant remained in his employment as a part-time employee or full time employee throughout his tenure of employment up to and including February 13, 2004. The claimant was increased to a full time employee for approximately seven weeks and then placed back in his part-time job by the employer.

The administrative law judge concludes that the claimant has clearly established that he has been able and available for work throughout the period of his employment with KDMM Enterprises, LLC, which began on or about November 19, 2003 and ended February 13, 2004. The administrative law judge concludes that Kerry S. Hayes is able and available for work within the intent and meaning of Iowa Code Section 96.4-3 and the foregoing sections of the Iowa Administrative Code.

The record indicates there has been a termination of employment on February 13, 2004. This matter therefore should be remanded to the Unemployment Insurance Services Division for inquiry with respect to the nature of the claimant's termination of employment and such other and further determinations as may be required.

DECISION:

The unemployment insurance decision dated February 16, 2004, reference 03, is affirmed. Kerry S. Hayes is able and available for work and still employed part-time or working on call effectively on January 25, 2004.

This matter is remanded to the Unemployment Insurance Services Division for inquiry with respect to the nature of the claimant's termination of employment and such other and further determinations as may be required.

kjf/b