

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL MCGONIGLE
Claimant

APPEAL NO: 11A-UI-16078-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DURHAM D & M LLC
Employer

OC: 06-12-11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 13, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 30, 2012. The claimant participated in the hearing. The employer 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.

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 school bus driver for Durham D & M LLC August 1, 2009, and continues to be employed in that capacity. The employer is a private contractor and the claimant does not work for the school district. The claimant usually works five and one-half hours per day and drives for occasional field trips and athletic events as well. He averages 15 shifts per week in driving the morning, mid-day, and afternoon shifts. The claimant did not make a weekly claim for benefits the week ending November 6, 2011. The claimant worked a shortened work week due to school not being in session a portion of the week ending November 12, 2011. He reported wages in the amount of \$184.00 and received benefits in the amount of \$178.00 the week ending November 12, 2011. He reported wages in the amount of \$455.00 the week ending November 19, 2011, which exceeded his weekly benefit amount and, consequently, he did not receive any benefits that week. The claimant did not file a weekly claim again until the week ending December 24, 2011. That issue is currently scheduled for hearing February 14, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not make a weekly claim for benefits the week ending November 6, 2011, and worked less hours than contemplated in the original contract of hire the week ending November 12, 2011.

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".

871 IAC 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 school bus driver. There has been no separation from his part-time employment. He did not make a weekly claim or receive benefits the week ending November 6, 2011, but he did not receive his regular number of hours the week ending November 12, 2011, due to a shortened school week, and received partial benefits that week. The administrative law judge concludes the claimant is eligible for partial unemployment benefits the week ending November 12, 2011, due to the shortened work week.

DECISION:

The December 13, 2011, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire but worked a shortened workweek the week ending November 12, 2011, and, therefore, is eligible for partial unemployment that week.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw