

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

BRETT W HALTER
2679 INDIGO CT
IOWA CITY IA 52240

THE UNIVERSITY OF IOWA
c/o DAVE BERGEON
EMPLOYEE RELATIONS
121 "R"
UNIVERSITY SERVICE BLDG
IOWA CITY IA 52242

Appeal Number: 04A-UI-03306-HT
OC: 08/17/03 R: 03
Claimant: Appellant (1-R)

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 – Able and Available

STATEMENT OF THE CASE:

The claimant, Brett Halter, filed an appeal from a decision dated March 17, 2004, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 15, 2004. The claimant participated on his own behalf. The employer, University of Iowa, participated by Program Consultant Dave Bergeon.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brett Halter began employment with the University of

Iowa on October 21, 2003. He was a food service worker contracted for a total of 720 hours. He was scheduled for 40 hours per week until the end of February 2004 when he approached his supervisor about a modification in his schedule. He wanted to be scheduled for fewer hours every week so he would reach his maximum hours later in the year. The supervisor agreed and he was scheduled for 24 hours per week beginning February 29, 2004, and he then filed for unemployment benefits as being partially unemployed.

Mr. Halter has reached his maximum number of hours as of March 20, 2004, and is currently unemployed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available. The judge concludes he is not.

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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was not hired to work a certain number of hours on a weekly basis, only for a total maximum number of hours. His weekly hours were reduced at his request, not the employer's. He could have remained working full-time hours but elected not to do so. He cannot therefore be considered to be partially unemployed as he modified his own work schedule and is not eligible for benefits.

DECISION:

The representative's decision of March 17, 2004, reference 03, is affirmed. Brett Halter is not eligible for benefits.

The issue of his separation from employment is remanded to the Claims Section for determination.

bgh/s