

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC H JOHNSON**

Claimant

**APPEAL NO. 07A-UI-10980-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ONEOTA RIVERVIEW CARE FACILITY INC**

Employer

**OC: 10/21/07 R: 04  
Claimant: Respondent (1)**

Section 96.4-3 – Able to and Available for Work

**STATEMENT OF THE CASE:**

Oneota Riverview Care Facility, Inc. (employer) appealed a representative's November 20, 2007 decision (reference 01) that concluded Eric H. Johnson (claimant) was eligible to receive unemployment insurance benefits because he is working reduced hours. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2007. The claimant participated in the hearing. Deb Vondersitt and Julie Gallagher appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant still employed at the same hours and wages that the employer hired him to work?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 19, 2004. At the time of hire, the claimant told the employer what medications he took. The claimant thought the employer knew he had narcolepsy. The employer hired the claimant to work as a full-time night shift medication aide. The claimant had no problems with his job until August 2007.

In August 2007, right before the claimant went on vacation, another employee found him sleeping at work. The employer talked to the claimant and learned his medication had lapsed and the claimant had been off his medication for a while. Although the employer does not allow employees to fall asleep at work, after the claimant told Gallagher he had narcolepsy and would go to his doctor and get back on his medication during his vacation, the employer did not discipline the claimant. The employer reminded the claimant it was imperative that he not fall asleep at work, and gave the claimant an opportunity to get back on his medication.

During his vacation, the claimant saw his doctor and started taking his medication again. The claimant did not have any problems again until October 21 when the claimant was again found sleeping at work. After the claimant fell asleep for a second time, the employer took him off the night shift. The employer concluded the night shift did not have enough stimuli to keep the claimant awake. The employer told the claimant the employer would try to schedule him to work a day shift.

When none of the employer's day shift employees would transfer to a night shift, the employer considered the claimant an on-call/as-needed employee. As a result of the change in status to an on-call employee, the claimant did not work full time. When the change in hours occurred, the claimant established a claim for unemployment insurance benefits. While the employer has contacted the claimant a few times to work, there have been weeks the claimant has not worked at all. The claimant is looking for a day-shift job.

#### **REASONING AND CONCLUSIONS OF LAW:**

When a claimant is still employed in a part-time job at the same hours and wages as contemplated when hired and is not working on a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). This regulation does not apply to the claimant because he was working full-time and then the employer changed his status to an on-call/as-needed employee. As a result of the change in employment status, the claimant's hours of work have been drastically reduced.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The fact the claimant has narcolepsy does not make him unable to work. Instead, the facts establish that for over three years, the claimant had no problems working a night shift. After the claimant's medication ran out and he did not have medication to take, he fell asleep at work in August 2007. As a result of the claimant's work record, the facts do not establish that he is not able to work a night shift. Also, with the claimant's occupation and work skills, there are jobs in his labor market for both day and night shift employees. The claimant established he is able to and available for work. As of October 21, 2007, the claimant is qualified to receive unemployment insurance benefits.

#### **DECISION:**

The representative's November 20, 2007 decision (reference 01) is affirmed. The claimant is able to and available for work...As of October 21, 2006, the claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge because the claimant is working reduced hours.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css