

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN DEWEY
Claimant

APPEAL NO: 10A-UI-10851-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SOUTHEAST IOWA REGIONAL PLANNING
COMMISSION**
Employer

OC: 06/13/10
Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

John Dewey (claimant) appealed an unemployment insurance decision dated July 30, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was still employed with Southeast Iowa Regional Planning Commission (employer) at the same hours and wage as in his original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2010. The claimant participated in the hearing. The employer participated through Robert Kuskowski, Transit Director and Kim Schisel, Finance Director. 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.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in his original contract of hire with this employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time driver in January 2008 with no guarantee of a minimum number of hours. There has not been a separation with this employer and he continues to be employed in the same capacity with no change in his hours or wages. The claimant was separated from another part-time employer, Community Action of Southeast Iowa. Iowa Workforce Development sent Community Action a notice of claim on May 27, 2010 and again on June 29, 2010 that the claimant was filing as a temporary layoff with job attached. Community Action did not protest the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for 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".

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 driver. There has been no separation from his part-time employment and he is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. The claimant is disqualified from receiving benefits from this employer.

However, the claimant is separated from his other part-time employer and qualifies for benefits from that employer, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated July 30, 2010, reference 01, is modified in favor of the claimant. The claimant does not qualify for unemployment insurance benefits from the employer herein and its account is not subject to charge. The claimant does qualify for part-time benefits from Community Action of Southeast Iowa (Account #069293-000), provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css

<http://www.iowaworkforce.org/ui/appeals/index.html>