

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD BOHN
Claimant

APPEAL NO: 10A-UI-01954-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL SEASONS TREE SERVICE INC
Employer

OC: 12-27-09
Claimant: Appellant (2R)

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 January 27, 2010, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 30, 2010. 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. The claimant has been separated from this employment and waived notice on the separation issue but because the employer was not present it could not waive notice. Therefore, the issue of the separation will be remanded to the Claims Section for an initial determination and decision.

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 by All Seasons Tree Service in December 2008 as a full-time, salaried operations manager. He worked more hours in the spring, summer and fall in the tree service area of the business than he did in the winter in the snow removal area of the business but was paid his regular salary all year long, regardless of whether he worked more or less than 40 hours per week. On January 3, 2010, Office Manager/mother-in-law, Barb Paul told the claimant the employer would no longer be issuing payroll checks. The last check he received was on December 18, 2009. Ms. Paul told the claimant there was “no income coming in so there would be no income going out” but stated the employer was not closing its doors. Ms. Paul would not tell the claimant if he was being discharged or laid off and when he stopped receiving his paychecks the claimant assumed his employment was terminated. The claimant never received any warnings while working for the employer and was never given any indication the employer was unhappy with his work. Neither did the employer state it wanted the claimant to return to work at any given time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not still employed at the same hours and wages as contemplated in the original contract of hire.

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 claimant was hired as a full-time operations manager for All Seasons Tree Service. There has been a separation from this employment and consequently the claimant is not working the same hours and wages as contemplated in the original contract of hire. Therefore, the claimant is eligible to receive benefits as long as he reports his part-time wages from driving a school bus for the school district.

DECISION:

The January 27, 2010, reference 01, decision is reversed. The claimant is not employed at the same hours and wages as in his original contract of hire and therefore is qualified for unemployment benefits, provided he is otherwise eligible. The issue of the claimant's separation from this employer shall be remanded to the Claims Section for an initial investigation and determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs