

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT D DEPPE
Claimant

APPEAL NO. 11A-UI-02196-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TASOS' INC
Employer

**OC: 01/16/11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 21, 2011, reference 02, which held claimant was still employed. After due notice, a telephone conference hearing was scheduled for and held on March 18, 2011. The employer participated by Elaine Balsi-Smith, owner. The claimant did not respond to the notice of hearing to provide a telephone number to be called for the hearing and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work and whether the claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant was hired to work part-time one day per week. Claimant was later given three days of work per week. In December 2010, the claimant was not available to work due to serious family needs. Another employee was hired while the claimant was off of work, so the claimant works four hours less per week.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The claimant is not partially unemployed with this employer. He was hired part-time for one day per week and his employment has actually increased since hiring. Benefits are denied.

DECISION:

The decision of the representative dated February 21, reference 02, is affirmed. Benefits are denied effective January 16, 2011.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/kjw