

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH J WARRIOR
Claimant

MASTERBRAND CABINETS INC
Employer

APPEAL 18A-UI-10337-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/17/17
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed an appeal from the October 3, 2018, (reference 01) that allowed benefits effective September 16, 2018, finding the claimant was partially unemployed. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2018. Claimant did not participate. Employer participated through Amy Mosley, Human Resources Representative. Official notice was taken of agency records

ISSUE:

Was the claimant partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer up until September 13, 2018. No decision has been issued by the unemployment insurance service center (UISC) regarding claimant's separation from employment.

At no time between December 2017 and September 13, 2018 was the claimant laid off due to lack of work or working reduced hours. At all times during that period the claimant had work available to him at the same hours and wages as in his base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not partially unemployed or able to work and available for work effective September 16, 2018.

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 Admin. Code r. 871-24.23(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.

Neither the claimant's hours of work nor his wages were reduced from December 2017 until September 13, 2018. Thus, the claimant is not considered partially unemployed. Since work was available for the claimant and he chose not to work the hours, he is also not able to and available for work. Accordingly, benefits are denied.

REMAND:

The claimant's separation from employment with this employer on or about September 13, 2018 is remanded to the UISC for a review and initial determination.

DECISION:

The October 3, 2018, (reference 01), decision is reversed. The claimant is not able to work and available for work effective September 16, 2018. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs