

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PRINCE MAYNE**  
Claimant

**APPEAL NO: 15A-UI-01378-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ERIKSEN INVESTMENT CO**  
Employer

**OC: 01/11/15**  
**Claimant: Appellant (2)**

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 29, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 26, 2015. The claimant participated in the hearing. Jennifer Bornhorst, Owner/President and Connie Brinkley, General Manager, participated in the hearing on behalf of the employer.

**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 as a part-time housekeeper for Eriksen Investment (Super 8 Motel) June 15, 2013, and continued to be employed in that capacity until his resignation date of March 23, 2015.

The claimant was originally only available to work on Saturdays and Sundays at the time of hire and was scheduled on both those days throughout his employment. He averaged 16 to 20 hours per week until the beginning of 2015. On Sunday January 11, 2015, the claimant worked three hours. He did not work the following Saturdays, January 24, February 7, 14, 21 and March 7, 2015, or Sunday March 22, 2015.

As time went on the claimant was available to work throughout the week as well as Saturdays and Sundays. He was available when the employer called him during the week to work on approximately three occasions during the last year.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire effective January 11, 2015.

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".

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.

The claimant was hired as a part-time housekeeper. While there has been a subsequent separation from his part-time employment, the claimant was not working for this employer at the same hours and wages as contemplated in the original contract of hire effective January 11, 2015. Consequently, the claimant is allowed partial unemployment insurance benefits, provided he is otherwise eligible.

**DECISION:**

The January 29, 2015, reference 01, decision is reversed. The claimant was not employed at the same hours and wages as in his original contract of hire effective January 11, 2015, and therefore is eligible for partial benefits, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs