

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICKY C SEBRING

Claimant

HAWKEYE COMMUNITY COLLEGE

Employer

APPEAL 15A-UI-00345-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed an appeal from the January 30, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 25, 2015. Claimant participated. Employer participated through (representative) John Clopton, Executive Director and Pam Hickman, Executive Secretary. Claimant's exhibit A was entered and received into the record.

ISSUE:

Is the claimant able to and available for work or is he still employed part-time under the same hours and wages as at the time of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a non-credit truck driving instructor beginning on July 22, 2012 through date of hearing as he remains employed. The claimant as a part-time employee was given no guarantee of any amount of work per week. His work is totally dependent upon the number of students attending the school at any one time. The claimant works for an educational institution. Employees of educational institutions do not receive unemployment insurance benefits during school breaks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 is not eligible for benefits as he is a part-time employee of an educational institution and has no guarantee of number of hours of work during any particular week. Accordingly, benefits are denied.

DECISION:

The January 30, 2015, reference 01, decision is reversed. The claimant is not able to work and available for work effective December 28, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs