

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEN JOHNSTON
Claimant

APPEAL NO. 09A-UI-11010-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST FLEET INC
Employer

**Original Claim: 06-07-09
Claimant: Appellant (1)**

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 July 27, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 17, 2009. The claimant participated in the hearing. Debra Parson, Director of Human Resources and Risk Management, and Matt Childs, Terminal 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 full-time over-the-road truck driver for First Fleet on February 21, 2008. There has been no change in his hours or wages since June 21, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire. Consequently, he is not eligible for benefits, because his hours and wages have not changed and he is not available for other employment due to his full-time employment status.

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".

871 IAC 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 full-time over-the-road truck driver and there has been no separation from this employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire.

DECISION:

The July 27, 2009, reference 03, decision is affirmed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw