

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS K O'FLATTERY
Claimant

APPEAL NO. 09A-UI-01670-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CHARLES CITY ELECTRONICS
BIKE AND TV SERVICE INC**
Employer

OC: 11/23/08 R: 02
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 96.4-3 – Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 26, 2009, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 23, 2009. The claimant participated personally. The employer participated by Julie Bock, Manager.

ISSUE:

The issue is whether the claimant is able and available for work and whether he was still employed at the same hours and wages as contemplated in the agreement of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began employment in April 2006 and continues to be employed at the time of hearing working less than full-time hours, working part-time and on-call as a bicycle/appliance repair person. Mr. O'Flattery initially was scheduled to work three days per week but at times worked additional hours with the tacit approval of his supervisor when customer service required it. Due to the declining and seasonal nature of Mr. O'Flattery's work assignments as a bicycle repair person, the claimant has not performed his services in the same pattern of employment as in the base period working less than three days per week on-call and as needed.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. O'Flattery is still employed part-time while working on-call but not working the same pattern of employment as in the base period. It does.

The evidence establishes that Mr. O'Flattery was hired to work three days per week plus additional work days if service work required it. The claimant often worked more than three

days per week with the tacit approval of his supervisor performing services for the company. Because of the seasonal nature of the employer's service, Mr. O'Flattery's working hours were substantially reduced after September 2008. At the time of hearing the claimant was no longer working three days per week, therefore, working differently than the contract of hire.

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.

For the reasons stated herein, the administrative law judge concludes the claimant is able and available for work, working on-call but not in the same pattern of employment as in the contract of hire. The claimant is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

DECISION:

The decision of the representative dated January 26, 2009, reference 02, is affirmed. The claimant is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs