

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DUSTIN T KELLY
447 DOUGLASS CT
IOWA CITY IA 52246

CITY OF IOWA CITY
ATTN PERSONNEL
410 E WASHINGTON ST
IOWA CITY IA 52240

Appeal Number: 04A-UI-03867-HT
OC: 02/29/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant, Dustin Kelly, filed an appeal from a decision dated March 30, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 27, 2004. The claimant participated on his own behalf. The employer, Iowa City, participated by Business Office Manager Martha Lubaroff.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dustin Kelly began employment with Iowa City in January 2001. He was a part-time library aide working 20 hours per week.

In July 2003, a new collective bargaining agreement was implemented, which contained provisions prohibiting non-students from working more than ten hours per week. As a part-time employee, the claimant was not a member of the collective bargaining unit and could not vote on the contract.

The employer had until February 1, 2004, to implement the changes and the claimant was reduced to nine hours per week beginning with that date.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible. The judge concludes he is.

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".

The claimant did not agree to the reduction in his hours. It was implemented by a collective bargaining agreement into which he had no input. Efkamp v. IDJS, 383 N.W.2d 566 (Iowa 1986) provides that it is not good cause attributable to the employer for quitting when wages reduced by a collective bargaining agreement as the right of a claimant to deal with the employer is surrendered to the union. However, in this case the claimant was not eligible to be a member of the union and could not vote on the contract. His right to bargain with the employer was not surrendered to the collective bargaining process. Therefore, the administrative law judge must consider this to be an involuntary reduction in hours, and the claimant is still available to work the same hours he worked during his base period.

DECISION:

The representative's decision of March 30, 2004, reference 01, is reversed. Dustin Kelly is eligible to receive unemployment benefits.

bgh/b