

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E WULFEKUHLE
Claimant

FAYETTE COUNTY
Employer

APPEAL 16A-UI-12500-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (1)

Section 96.4-3 – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Part-time Job at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 7, 2016, (reference 02) unemployment insurance decision that concluded the claimant was ineligible to receive partial unemployment insurance benefits since his hours and/or wages had not been reduced. The parties were properly notified about the hearing. A telephone hearing was held on December 9, 2016. Claimant participated. Employer did not respond to the hearing notice or participate.

ISSUES:

Was the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits effective October 9, 2016, based on his part-time employment with Fayette County. His weekly benefit amount was determined to be \$83.

The claimant took a part-time job with the employer as a laborer in 2005. He is currently employed on the same basis. Up until February 2016, claimant generally worked 3.5 hours each week day at \$7.50 per hour. In February 2016, employer cut Friday from claimant's scheduled shifts. He is allowed to pick up extra shifts when available. Claimant currently earns the gross amount of \$105 each week.

Claimant does not have other potentially qualifying wages in the base period history. The administrative record reflects wages from this employer of:

\$1,921 in the third quarter of 2015,
\$1,432 in the fourth quarter of 2015,
\$1,316 in the first quarter of 2016,
\$1,106 in the second quarter of 2016,

\$1,391 in the third quarter of 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is working the same hours as contemplated at the time of his hire and as worked throughout the duration of his base period.

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.

In this case, claimant was hired to work for employer on a part-time basis. Claimant continues to work for employer on a part-time basis.

Although the amount of set days per week claimant is assigned to work changed in February, he is generally working and earning the same amount that he worked prior to the change. Claimant is currently earning \$105 per week. Thus, he is on track to earn \$1,365 during the fourth quarter of 2016. During the fourth quarter of 2015, claimant earned \$1,432, which is only \$67.00 dollars more than he will earn during the fourth quarter of 2016. The evidence shows that claimant is generally working in the same pattern as contemplated at the time of hire and that he worked during his base period.

DECISION:

The November 7, 2016, (reference 02) decision is affirmed. The claimant is still employed in a part-time job as contemplated at the time of hire. Benefits are denied.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

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