

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY EATON**  
Claimant

**APPEAL NO: 13A-UI-07419-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESSIVE COMPANIES INC**  
Employer

**OC: 05/26/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Gary Eaton (claimant) appealed an unemployment insurance decision dated June 14, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he is still working at the same hours and wages with Progressive Companies, Inc. (employer) as in his original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2013. The claimant participated in the hearing. The employer participated through Larry Stoller.

**ISSUE:**

The issue is whether the claimant is working the same hours and wages as in his original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time, on-call truck driver on August 18, 2010. Production is scaled down during the summer and he does not work as many hours but the claimant continues to be employed in the same capacity with no change in the contract of hire.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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.

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

The claimant was hired as a part-time, on-call truck driver. There has been no separation from his part-time employment and he is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. Benefits are therefore denied.

**DECISION:**

The unemployment insurance decision dated June 14, 2013, reference 01, is affirmed. The claimant continues to be employed part-time in the same hours and wages as contemplated in the original agreement of hire. Benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs