

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY A RYANT
Claimant

APPEAL NO. 09A-UI-19053-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STEWARD DELL INC
Employer

**Original Claim: 11/15/09
Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Employment as in Original Contract of Hire

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated December 8, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant was still employed part-time or working on-call but available for work because of not performing services in the same pattern of employment as in the base period. After due notice was issued, a telephone conference hearing was held on February 1, 2009. The claimant participated personally. The employer participated by Steven Steward, company owner. Potential witnesses were John Verrips and Mark Suchanek.

ISSUE:

At issue is whether the claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cory Ryant began employment with Steward Dell, Inc. in June of 2008 as a full-time local driver being paid by the mile. The claimant continued in his full-time capacity until November 16, 2009, when a separation from employment took place.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant is still employed part-time or working on call in the same pattern of employment as in the base period. It does not.

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 evidence is undisputed in this matter that Mr. Ryant was not employed part-time or on-call by Steward Dell, Inc. The evidence in the record establishes that the claimant was employed as a full-time driver from June 2008 until November 16, 2009, when a separation from employment took place. The claimant did not assume a part-time or on-call status with this employer, either before, on, or after that date.

As it is undisputed that Mr. Ryant is not still employed by Steward Dell, Inc., part-time or working on-call, on the effective date of his claim for unemployment insurance benefits, the decision that the claimant is partially unemployed and eligible to receive benefits from this employer's account is reversed.

The claimant was unwilling to waive notice on the issue of his separation from employment.

The matter of the claimant's separation from employment is remanded to the Unemployment Insurance Services Division for investigation and the issuance of an appealable determination on the claimant's separation from employment and charging for this employer.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated December 8, 2009, reference 01, is reversed. The claimant is not employed part-time or on-call with this employer and not available for work with Steward Dell, Inc., beginning November 16, 2009. The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination. The issue of whether there has been a disqualifying separation from employment with this employer is remanded to the Unemployment Insurance Services Division for investigation and the issuance of an appealable determination with respect to Mr. Ryant's separation from work and charging for Steward Dell, Inc.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw