

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PIERRE L TALTON**

Claimant

**APPEAL NO. 16A-UI-05120-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**

Employer

**OC: 02/21/16**

**Claimant: Respondent (3/R)**

Section 96.5-2(a) – Discharge  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. filed a timely appeal from an unemployment insurance decision dated May 2, 2016 (reference 03) which found that the claimant had been dismissed from work on February 20, 2015 for no disqualifying reason. A telephone hearing was scheduled for May 17, 2016. The claimant, the respondent, did not participate in the telephone hearing because the Notice of Hearing sent to the parties did not include the issue of whether the claimant was still employed by the company at the same hours and wages agreed upon by the parties. Mr. Talton was unwilling to waive notice on the issue. The employer had asserted that issue in its letter of appeal, stating that there had been no separation from employment but only a change from full-time to part-time status. The employer was willing to waive notice on the issue of still being employed at the same hours and wages. Due to *the necessity* to move this matter forward so that the issue of whether the claimant is still employed part time, working the same hours and wages agreed upon, can be remanded for investigation and determination, the Administrative Law Judge enters the following findings of fact, reasoning and conclusions of law, and decision based upon the administrative file and the record.

**ISSUE:**

The issue is whether the claimant had been dismissed from employment.

**FINDINGS OF FACT:**

The parties were notified of the scheduled hearing on this appeal, where the employer asserted that there had been no separation from employment and that the claimant continued to be employed part time at the same hours and wages agreed upon between the parties. The adjudicator's determination dated May 2, 2016 (reference 01) had concluded that there had been a separation from employment. Before the issue of whether the claimant continues to be employed part time at the same hours and wages agreed upon can be remanded for investigation and determination, the issue of whether Mr. Talton continues to be employed by Fareway Stores, Inc. at the same hours and wages and the issue of whether there has been a separation from employment must be resolved.

Based upon the administrative file and the record, the administrative law judge finds: Pierre Talton had full-time status in his employment with Fareway Stores, Inc. until February 20, 2015, when he was moved to part-time status by mutual agreement between the parties. The claimant had been tardy often and was given the choice of remaining employed, changing to part time, quitting his job, or being discharged for his tardiness.

Mr. Talton and his employer mutually agreed to the change to part-time work and the claimant continued to be employed by Fareway Stores, Inc. with no lapse in employment as of May 17, 2016, the date scheduled for the telephone hearing in this matter.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the administrative record establishes that there has been a separation from employment. It does not.

Iowa Admin. Code r. 871-26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge, having reviewed the evidence in the record and the administrative file, concludes that no separation from employment took place between Pierre Talton and Fareway Stores, Inc. on or about February 20, 2015 and that only the claimant's full-time status was changed to part-time status, by the agreement of the parties at that time.

For these reasons, the adjudicator's determination dated May 2, 2016 (reference 03) is modified to find that there was no separation from employment and, therefore, no disqualifying event has taken place. The claimant remains potentially eligible to receive unemployment insurance, providing that he meets all other requirements of Iowa law.

The issue of whether the claimant continues to be employed part time and/or on-call at the same hours and wages as agreed upon by the parties is remanded to the Claims Division of Iowa Workforce Development for investigation and the issuance of an appealable determination.

Pursuant to the rule, an interested party must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the address listed at the beginning of this decision and must explain the good cause for requesting the reopening of the record on the issue of whether there was a disqualifying job separation on or about February 20, 2015.

**DECISION:**

The representative's decision dated May 2, 2016 (reference 03) is affirmed as modified. The portion of the decision finding the claimant potentially eligible to receive unemployment insurance benefits is affirmed. The portion of the determination finding that there was a job separation on February 20, 2015 is modified to find that no job separation. The issue of whether the claimant is still employed part time and/or on-call at the same hours and wages as agreed upon between the parties is remanded to the Claims Division for investigation and the issuance of an appealable determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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