

The claimant did not know why he was removed from the administrative building. (Tr. 5) The employer offered him additional hours 'on-call' for those Ipsco employees who called in sick. (Tr. 5-6) These additional hours did not make up for the hours he lost when he ceased cleaning the administration building. Mr. Gibson filed for unemployment benefits for which he was, initially, denied on the basis that he was unduly limiting his availability for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) (2001) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h".

The employer testified that Mr. Gibson's was initially hired to work approximately 33 hours per week. (Tr. 3) It is clear from this record, however, that his removal from the administrative end of his position, which made up 18 hours of those hours, left him far short of his original 33-hour workweek. Even though the employer argues that he refused an offer of additional work at another location (Drivers) due to lack of transportation, the Board finds the claimant's denial more credible that such an offer was not made and refused based on transportation. (Tr. 3-4) The claimant provided unrefuted testimony that he had an excellent attendance record and no transportation concerns as he had not only a ride from his brother, but he used multiple modes of transportation to get to the job site. (Tr. 6) The only work offered him was on-call work. Substantial evidence supports that Mr. Gibson was able and available for work to the same extent he was at the Ipsco facility during his base period. For this reason, we conclude that he is not disqualified for unemployment benefits.

DECISION:

The administrative law judge's decision dated March 2, 2009 is **REVERSED**. The claimant is able and available for work within the meaning of the statute. As such, he is allowed benefits provided he is otherwise eligible.

John A. Peno

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester