

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D PRACT
Claimant

APPEAL NO. 06A-UI-11524-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COUNCIL BLUFFS
COMMUNITY SCHOOL DISTRICT**
Employer

**OC: 10-15-06 R: 01
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 18, 2006. The claimant did participate. The employer did participate through Janet Reiners, Executive Director of Human Resources, and was represented by Alice Smolsky of TALX UC eXpress.

ISSUE:

Is the claimant still employed at the same hours and wages as when hired?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant is employed as a substitute teacher part-time, beginning sometime in 1990's. The claimant is currently on an on-call, as-needed basis as substitute teacher whenever he is called by the school district. The claimant has been offered substitute days that he has not accepted.

From August 17, 2005 until October 3, 2005 the claimant worked as a janitor for the school district until he voluntarily quit.

Since the claimant quit his janitorial position in October 2005 he has not been guaranteed any hours or wages or a specific positions. His base period is composed of part-time wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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.

The claimant was hired to work as a substitute teacher. He was not guaranteed any hours or any teaching contract. His agreement with the school district has not changed since he began as substitute. The claimant is still working on an on-call, as-needed basis when called by the school district. He is not working any different hours than he has as a substitute teacher. Accordingly, benefits are denied.

DECISION:

The November 21, 2006, reference 02, decision is affirmed. The claimant is not able to work and available for work effective October 15, 2006. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw