

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE WIRES

Claimant

APPEAL NO: 12A-UI-10394-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA XIV AGENCY OF AGING

Employer

OC: 06-24-12

Claimant: Respondent (2)

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 24, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 25, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Steve Bolie, Executive Director and Pam Stow, Transit Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time driver for Area XIV Agency of Aging June 13, 2011, and continues to be employed in that capacity with no change in his hours or wages. On July 1, 2012, the Southern Iowa Trolley department, which was a part of the Area XIV Agency of Aging, became its own entity and is now the claimant's employer. This was done in anticipation of a mandate from the legislature that several Agencies of Aging merge in 2013. The employer decided to make the transit department its own agency to make the merger less complicated. The claimant was not laid off and there was no change in his hours or wages when his department became its own agency and the claimant continues to work 20 to 30 hours per week. Southern Iowa Trolley continues to operate with the same employees, customers, drivers, hours and wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at 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".

The claimant was hired as a part-time driver and there has been no separation from his part-time employment. The claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on his part-time employment. In addition to the fact there has been no layoff or change in his hours and wages, the claimant is working too many hours to be considered able and available to perform other work. Therefore, benefits must be denied.

DECISION:

The August 24, 2012, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs