

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM PARKER
Claimant

APPEAL NO. 07A-UI-10932-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOYNE LANDSCAPING & SNOW PLOWING
Employer

**OC: 10/14/07 R: 04
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

William Parker (claimant) appealed an unemployment insurance decision dated November 21, 2007, reference 04, which held that he was not eligible for unemployment insurance benefits because he was still employed at the same hours and wages with Hoyne Landscaping & Snow Plowing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began working part-time for the employer in March 2007. He testified that he worked full-time for the employer but provided no documentation establishing that claim and the wage records provided to Iowa Workforce do not establish that either. The claimant last worked for this employer on November 16, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for 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".

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 as a part-time laborer. He contends he worked as a full-time employee but offered no documentary evidence to establish that claim. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The claimant did not separate from this employer until November 16, 2007. Prior to that, there had been no separation from his part-time employment and the claimant was not considered able for other employment as of October 14, 2007.

DECISION:

The unemployment insurance decision dated November 21, 2007, reference 04, is affirmed. Benefits are denied as of October 14, 2007.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css