

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORRIS AMARA
Claimant

APPEAL NO: 13A-UI-10524-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 08/18/13
Claimant: Respondent (2R)

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 September 6, 2013, reference 02, 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 October 9, 2013. The claimant participated in the hearing. Teresa Tekolste, Human Resourc Manager; Michael Gauthier, Direct Support Manager; Casie Bellzung, Program Coordinator; and Treve Lumsden, Employer Representative, 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 full-time direct support associate for Mosaic July 27, 2000. He chose to become a part-time employee March 31, 2013.

The employer went through a restructuring in August 2013 and consequently the claimant's regular assignment was changed August 18, 2013. Direct Support Manager Michael Gauthier interviewed the claimant August 16, 2013, for another full-time position but chose to hire another employee for that job and the claimant was very upset about that decision. Mr. Gauthier also offered the claimant eight shifts over the upcoming four week period beginning August 24, 2013, and continuing September 1, 5, 6, 7 and 8, 13 and 14, 2013, and the claimant accepted the shifts. The claimant showed up for the job that was offered to and accepted by the other employee August 23, 2013, and was very upset to find Mr. Gauthier there training the new employee. The claimant was very upset and Mr. Gauthier suggested he talk to human resources.

The claimant was a no-call/no-show for each of the shifts he was scheduled. After the claimant failed to show up or call off for his shifts different management members of the employer's staff

attempted to contact the claimant but he would not answer their calls and would not return their calls. On September 4, 2013, Human Resource Manager Teresa Tekolste spoke to the claimant but he did not provide a reason for his absences or failure to call to report he would not be at work. Ms. Tekolste told him she was concerned because that type of behavior was out of character for him and the claimant stated he was out of town from September 1, 2013, until September 10, 2013. The claimant agreed to call her when he returned from Minnesota on that date but when Ms. Tekolste did not hear from him by September 17, 2013, she mailed him a letter reiterating their phone call of September 4, 2013, and told him she still wanted to discuss the situation with him. She also enclosed a resignation form and asked the claimant to complete it if he was quitting his job. The claimant did not return the form or have further contact with the employer.

The employer believes the claimant is still employed as a part-time employee. The claimant testified his employment was terminated by Mr. Gauthier.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages as contemplated in the original contract of hire until August 24, 2013, at which time he voluntarily resigned his position.

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 full-time direct support professional but went to part-time status March 31, 2013. The administrative law judge finds there has been a separation from the claimant's part-time employment with Mosaic. The claimant was working for the employer at the same hours and wages until his separation August 23, 2013. The claimant is disqualified from receiving benefits based on his part-time employment.

There are issues regarding the claimant's separation from this employer, whether he was able and available for work the week ending September 7, 2013, due to the fact he was on vacation in Minnesota, and whether he is overpaid benefits, that have not yet been adjudicated by the Claims Section.

DECISION:

The September 6, 2013, reference 02, decision is reversed. The claimant was still employed at the same hours and wages as in his most recent contract of hire prior to his separation August 23, 2013, and therefore is not qualified for benefits based on this part-time employment. The issues regarding the claimant's separation from this employer, whether he is able and available for work the week ending September 7, 2013, and whether he is overpaid benefits are remanded to the Claims Section for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs