

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN A SPORE

Claimant

APPEAL 17A-UI-05641-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 11/13/16

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed an appeal from the May 23, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2017. Claimant did not participate as he did not answer the telephone when called to begin the hearing. Employer participated through Julie Coughlin, Branch Manager.

ISSUES:

Is the claimant able to and available for work?

Does the claimant meet the definition of being considered partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has had one assignment while working for this temporary agency employer, Remedy Intelligent Staffing. He was assigned to work part-time at Ryder as a material handler beginning on January 10, 2016. The claimant's wages records show he never worked full-time for this employer while assigned at Ryder. The claimant was never guaranteed full-time hours nor was he ever promised a minimum number of hours per week at Ryder. On January 30, 2017 the claimant was given a promotion at his assignment at Ryder and was moved into the table lead position. He was paid more per hour and was expected to work Monday through Friday. He was never guaranteed that even as a table lead worker he would work a minimum number of hours. The employer records show the most hours the claimant ever worked in one week was 33.13 hours.

The claimant chose to voluntarily move back to the material handler position effective March 27, 2017. The claimant made the choice to change jobs to one he knew would give him less hours of work because his personal health issues stopped him from being at work all five days per week on a regular basis. The claimant could have continued to work in the table lead position but chose not to do so. The employer's records also show that on a regular basis the claimant was a no-call no-show for work shifts. The claimant was regularly not working all hours available to him. By not showing up for work and by moving out of the table lead position, the

claimant chose to work less hours than the employer had available for him to work. As an example, for the week ending June 10, the claimant only worked 7.83 hours for the week. Additional work was available for him every other day of the week, but the claimant simply chose not to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not partially unemployed effective April 23, 2017 and is not able to and available for work effective April 23, 2017.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has regularly chosen not to work all hours he could have. The claimant specifically chose to give up the team lead job because he could not regularly be at work five days per week. Under these circumstances, the claimant cannot be considered able to and available for work effective April 23, 2017.

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time or in a temporary assignment, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and is currently employed under the same hours and wages as contemplated at hire he is not considered partially unemployed.

DECISION:

The May 23, 2017, (reference 02) decision is reversed. The claimant is not partially unemployed and benefits are denied effective April 23, 2017. The claimant is not able to and available for work effective April 23, 2017. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs