

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
NATHAN A ROSE Claimant	APPEAL NO. 08A-UI-09067-DT
SC DATA CENTER INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/06/08 R: 04 Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Nathan A. Rose (claimant) appealed a representative's October 1, 2008 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with SC Data Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-09068-DT. The claimant participated in the hearing. Sara Anderson appeared on the employer's behalf and presented testimony from one other witness, Sherrill Whitmore. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2007. He normally worked on the second shift, Monday through Friday, as a customer service representative, in the employer's Clinton, Iowa call center of its direct marketing catalog company. The work was somewhat season; during the winter months the claimant had averaged about 33 hours per week, whereas in the spring he had averaged about 26 hours per week. In the summer for most weeks he was being scheduled for between 15 and 26 hours. The claimant's last day of work was September 19, 2008.

However, beginning the week of August 24 the claimant was not working the hours for which he was scheduled. For that week ending August 30 he was scheduled for 26 hours but worked only 12.53; for the week ending September 6 he was scheduled for 19 hours but worked only 3.7; for the week ending September 13 he was scheduled to work 15.2 hours but worked only 4.2; and for the week ending September 20 he was scheduled for 13.5 hours but worked only 5.49. The reason the claimant did not work the hours for which he was scheduled was that he had been ill, including hospitalization for some of the days. The other days for which he had been scheduled

he either called in absences for illness or personal business, or transferred his hours to other employees.

The claimant established an unemployment insurance benefit year effective July 6, 2008. During the period beginning August 24 the claimant was filing weekly claims for unemployment insurance benefits seeking partial benefits for the difference between his earnings and his weekly earnings limit.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed and eligible for partial unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b. With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. An employee who is working a reduced schedule because he cannot work the hours made available by the employer due to due to personal illness or other personal issues is not “able and available” for work so as to be eligible for unemployment insurance benefits; that time away from work is “voluntary unemployment.” 871 IAC 24.23(1), (10) and (29). Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992).

DECISION:

The representative's October 1, 2008 decision (reference 02) is affirmed. The claimant was not able to work and available for his scheduled work effective August 24, 2008. The claimant is not qualified to receive unemployment insurance benefits for the period from August 24 through September 20, 2008.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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