

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN M SHEPARD
Claimant

APPEAL NO: 17A-UI-12433-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODLINER INC
Employer

OC: 01/22/17
Claimant: Respondent (1)

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 November 30, 2017, reference 05, 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 December 27, 2017. The claimant participated in the hearing. John Martin, Regional 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 truck driver for Foodliner April 4, 2016. At the time of hire, he informed the employer he could only earn \$1,190.00 per month because he has heart issues and is on disability. The DOT has certified him to drive on highways but not interstates. The claimant can accept 11 loads per month from the employer. If the employer cannot provide him with 11 loads per month as the parties agreed at the time of hire, the claimant files for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages as contemplated in the original contract of hire.

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(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 truck driver. There has been no separation from his part-time employment but the claimant is not currently working for this employer at the same hours and wages as contemplated in the original contract of hire each month. The claimant is still available to the same extent he was at the time of hire but the employer does not always have work available for the claimant. The claimant is considered able and available and is eligible for partial unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The November 30, 2017, reference 05, decision is affirmed. The claimant is not working the same hours for the same wages as in his original contract of hire but is able and available for work to the same extent as when he was hired and therefore is qualified for partial benefits based on his part-time employment, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn