

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CLIFORD T ESTORES**  
Claimant

**APPEAL NO. 15A-UI-03424-N-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**P J IOWA LC**  
Employer

**OC: 07/06/14**  
**Claimant: Appellant (1R)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated March 13, 2015, reference 02, which denied unemployment insurance benefits as of July 6, 2014 finding that the claimant was still employed in his job at the same hours and wages as in the original agreement of hire and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on April 14, 2015. The claimant participated. The employer participated by Mr. Cayle Campbell, Area Supervisor and Ms. Kim Donaldson, Director of Human Resources.

**ISSUE:**

The issue is whether the claimant was still employed part time for the same hours and wages as in the original agreement of hire.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Clifford Estores began employment with P J Iowa LC on November 25, 2013. The claimant was hired to work as a part-time delivery driver for the company with no guarantee as to the minimum hours of work that he would be assigned each week. Mr. Estores was paid \$5.25 plus tips. Mr. Estores opened a claim for partial unemployment insurance benefits with an effective date of July 6, 2014 and at that time continued to be employed by P J Iowa in the same part-time delivery job position at the same rate of pay per hour.

It appears that Mr. Estores had a later job separation from P J Iowa LC and the claimant's job separation may not have been reported to or adjudicated by Iowa Workforce Development. The claimant's job separation is not a subject of this appeal.

## REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 worker with no minimum number of working hours guaranteed each week and was hired at the rate of \$5.25 per hour plus tips. At the time Mr. Estores opened his claim for unemployment insurance benefits he continued to be employed in the same part-time position as was agreed at the time he was hired. He understood at the time that he was hired that there was no guarantee of a minimum number of working hours that he might work in a week and that his hours depended upon the employer's needs. The claimant continues to be paid at the same rate of pay per hour plus tips. The claimant's part-time employment with no guarantee as to the minimum number of hours and the claimant's pay has not changed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work due to his work with this employer. The claimant is not eligible to receive partial unemployment insurance benefits because he continued to be employed at the same hours and pay as agreed upon at the time that he was hired.

**DECISION:**

The representative's decision dated March 13, 2015, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not able and available for work and is not eligible for partial unemployment insurance benefits as he continues to be employed at the same hours and wages agreed upon at the time of hire. The issue of the claimant's later separation from employment with this employer is remanded to the Claims Division for investigation.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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