

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN NEWTON
Claimant

APPEAL NO. 11A-UI-02438-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAPID-MAC-INC
Employer

**OC: 01-02-11
Claimant: Respondent (2)**

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 February 21, 2011, reference 01, 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 March 24, 2011. The claimant participated in the hearing. David Spreitzer, store 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 custodian/maintenance man for McDonalds July 13, 2007, and continues to be employed in that capacity with no change in his hours or wages. At the time of hire, the employer told the claimant his hours would be 7:00 a.m. to 11:00 a.m. to 12:00 p.m. and sometimes it would ask him to stay and help in the kitchen until 2:00 or 3:00 p.m. if it was busy. If it was slow, the employer would ask for volunteers to go home early but no one was ever forced to leave before the end of their shift. The claimant usually chose to leave early. The claimant testified his hours dropped “drastically” six to seven months ago because the employer was not satisfied with his performance. The employer denies that charge and maintains the claimant was hired and worked as a part-time employee. The claimant was sent home early following four no-call, no-shows and left without checking with the employer on three other occasions. Sometimes the employer had difficulty finding the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire.

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 part-time maintenance employee. There has been no separation from his part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. Consequently, the claimant is disqualified from receiving benefits based on his part-time employment.

DECISION:

The February 21, 2011, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire and, therefore, is not qualified for benefits based on his part-time employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw