

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS J HAMILTON
Claimant

APPEAL NO. 07A-UI-06134-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CEDAR RAPIDS PHONE SYSTEM SALES
SERVICE TECH INC/CR PSSST/IA PH SYST SST**
Employer

**OC: 04/29/07 R: 03
Claimant: Appellant (1)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dennis Hamilton filed a timely appeal from the June 11, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was commenced on July 5, 2007 and concluded on July 16, 2007. Mr. Hamilton participated. Mildred Bruzek, owner, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 07A-UI-06135-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and other contents of the Database Readout (DBRO) document.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

Whether the claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In 2005, Dennis Hamilton commenced his part-time, on-call employment with Cedar Rapids Phone System Sales Service Tech Inc., otherwise known as PSSST. The employer contracts with other businesses to install and service commercial telephone systems and Mr. Hamilton works as a service technician. Prior to becoming an employee of the business, Mr. Hamilton did the same work for the employer as an independent contractor. Since Mr. Hamilton became an employee he had continued under the same conditions of employment. Mr. Hamilton continues to perform services on an on-call basis and has never had a guarantee of hours. Mr. Hamilton has earned the same wage for his services and receives a commission when he brings a new client to the employer.

All of Mr. Hamilton's base period wage credits are based on the part-time, on-call employment with this employer.

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 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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. 871 IAC 24.23(26)

An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)(a) and (b). An individual who is willing to accept only on-call work is not considered to be available for work. 871 IAC 24.22(2)(i)(3)

The evidence indicates that Mr. Hamilton is still employed in his part-time, on-call position under the same hours and wages that existed at the time of his hire in 2005. The evidence indicates that Mr. Hamilton's base period wage credits are based entirely on this employment. Mr. Hamilton is not partially unemployed and does not meet the availability requirements of Iowa Code section 96.4(3). Mr. Hamilton is not eligible for unemployment insurance benefits.

DECISION:

The Agency representative's June 11, 2007, reference 01 is affirmed. The claimant does not meet the availability requirements of Iowa Code section 96.4(3) and is not partially unemployed. Accordingly, the claimant is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs