

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNITH R LAKE**  
Claimant

**APPEAL NO. 10A-UI-02132-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LE GRAND SANITATION**  
Employer

**Original Claim: 01/03/10  
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Still Employed at Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated February 5, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning January 3, 2010, upon a finding that the claimant is still employed part-time or working on-call whenever work was available but not performing services in the same pattern of employment as in the base period. After due notice was issued, a telephone conference hearing was scheduled for and held on March 15, 2010. The claimant participated personally. The employer participated by Victoria Keen, bookkeeper/secretary.

**ISSUE:**

At issue is whether the claimant is still employed part-time or working on-call when work is available, performing services in the same pattern of employment as in the base period.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kenneth Lake began his employment with Le Grand Sanitation on January 13, 2009. The claimant was employed as a full-time trash truck driver/helper and was paid by the hour. On January 6, 2010, the employer reduced Mr. Lake's working hours because the claimant had been banned from performing his services for the company by an area landfill operator. The landfill operator alleged that Mr. Lake had been speeding, driving inappropriately, and engaging in argumentative behavior using improper language. The landfill operator therefore would not allow the claimant to return to its facility.

The employer elected to retain Mr. Lake as an employee, utilizing him on an on-call, part-time basis when his services were needed. Mr. Lake opened a claim for partial unemployment insurance benefits with an effective date of January 3, 2010.

Mr. Lake has imposed no limitations that would remove him from the labor market and is available to work full-time hours if additional work becomes available. The claimant's working

hours with Le Grand Sanitation had been reduced from full-time to approximately one-half day per week, when the employer utilizes Mr. Lake's services in other capacities.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is working part-time or on-call for this employer but not working in the same pattern of employment as in the base period. It does.

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 evidence in the record establishes that Mr. Lake continues to be employed by Le Grand Sanitation but not working in the same pattern of employment as established in the base period. Mr. Lake was previously employed full-time, but his hours were reduced by the company to a part-time, on-call status effective January 6, 2010, because the employer was no longer able to utilize the claimant's services in the same pattern of employment in the claimant's base period and agreed upon at the time of hire. There is no provision in the Iowa Employment Security Act that provides for disqualification from benefits for an individual whose hours are reduced because of his or her conduct.

The employer elected to reduce the claimant's hours instead of discharging him. The claimant is still employed by Le Grand Sanitation under different terms and conditions than originally hired. Inasmuch as he is not working full-time as agreed and guaranteed at the time of hire, the claimant being assigned to work fewer hours renders him partially unemployed. See 871 IAC 24.23(26).

Although the administrative law judge is sympathetic to the employer's situation, for the above-stated reasons, and upon application of the law, the administrative law judge concludes that the claimant's reduction in hours by the employer to part-time or on-call status renders the

claimant partially unemployed and eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated February 5, 2010, reference 01, is affirmed. The claimant was able and available for work, still employed part-time or working on-call, but not performing services in the same pattern of employment as in the base period. The claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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