

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEREMY T PENISTON
Claimant

APPEAL NO. 15A-UI-13374-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

OC: 12/21/14
Claimant: Respondent (2/R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Kimberly Chrysler Plymouth (employer) appealed a representative's November 25, 2015, decision (reference 11) that concluded Jeremy Peniston (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Shawn Tygart, Service Manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer as a full-time service technician and was paid a flat rate for his work. The employer had plenty of work for the claimant but the claimant could only perform 25 to 30 hours of work per week. The claimant was frequently late to work and left early. He called in and said he had no gas money for transportation or was gone for two days. He worked through November 15, 2015. After that he called the employer and said he was looking for a different career because he was not making enough money.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off, he is considered to be unavailable for work. The claimant requested a reduction of his hours and the employer granted his request. The change in hours was initiated by the claimant. He is considered to be unavailable for work when he was tardy, requested to leave early, and took days off. The claimant is disqualified from receiving unemployment insurance benefits from October 25, 2015, due to his unavailability for work.

The issue of the overpayment is remanded for determination.

DECISION:

The representative's November 25, 2015, decision (reference 11) is reversed. The claimant is disqualified from receiving unemployment insurance benefits from October 25, 2015, due to his unavailability for work. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css