

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JACK L FIFER
219 S CLARK ST
DAVENPORT IA 52802-1542**

**FRIDAS LANDSCAPE DESIGN
AND GARDEN INC
DBA GARDEN USA
3324 DIEHN AVE
DAVENPORT IA 52801**

**Appeal Number: 05A-UI-02601-HT
OC: 01/02/05 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant, Jack Fifer, filed an appeal from a decision dated March 3, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 30, 2005. The claimant participated on his own behalf. The employer, Garden USA, participated by Owner Jane Wiese.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jack Fifer began employment with Garden USA in

March 2004. He was hired as a part-time maintenance person with a guarantee of at least ten hours per week but not maximum. The hours would vary depending on the time of the year and the amount of work available.

Mr. Fifer filed a claim for unemployment benefits with an effective date of January 2, 2005. Work was slow but he was still scheduled for at least ten hours per week. However, the week ending January 14, 2005, he only worked about four hours because he called in sick two days that week. All the other weeks between January 2 and 29, 2005, he worked the hours scheduled.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is ineligible. The judge concludes he is.

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 guaranteed a minimum of ten hours per week at the time and the employer had met that requirement during the weeks in question. Although he may have customarily been scheduled for more hours on a weekly basis, the fact that only ten hours were available during the slow times does not mean he is working a reduced work week. Under the provisions of the above Administrative Code section, he is not able and available for work because he is working in the same part-time job at the same hours and wages.

DECISION:

The representative's decision of March 3, 2005, reference 01, is affirmed. Jack Fifer is ineligible for benefits as he is not able and available for work.

bgh/tjc