

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E STANFIELD
Claimant

APPEAL NO. 16A-UI-11431-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/18/16
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Still Employed Part-Time at Same Hours and Wages

STATEMENT OF THE CASE:

Thomas Stanfield, the claimant, filed a timely appeal from a representative's decision dated October 14, 2016, reference 02, which denied unemployment insurance benefits as of October 9, 2016 finding that the claimant was still employed in his job at the same hours and wages as originally agreed and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on November 4, 2016. Claimant participated. Although duly notified, the employer indicated they would not participate in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Thomas Stanfield began employment with Casey's Marketing Company on September 11, 2015. Mr. Stanfield was hired to work part time as kitchen help with no guarantee of any minimum number of hours per week. Claimant was paid at the rate of \$9.25 per hour.

Mr. Stanfield continues to be employed by Casey's Marketing Company at the time of hearing and continues to be working part time as a delivery driver with no set minimum number of hours of work guaranteed each week. The claimant is currently paid at the rate of \$10.50 per hour.

Mr. Stanfield opened a claim for unemployment insurance benefits with an effective date of October 9, 2016 because the employer had fewer working hours available to Mr. Stanfield than were usually available to him and Mr. Stanfield believed that he was, therefore, eligible to receive partial unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

Iowa Admin. Code r. 871-24.23(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.

In this case the claimant was hired as a part-time worker with no guarantee as to any minimum number of working hours each week. The claimant is still employed part time working for this employer with no guaranteed minimum number of working hours each week as agreed at the time of hire. When hired, Mr. Stanfield understood that his working hours were dependent upon the employer's needs; that has not changed. Inasmuch as Mr. Stanfield was not guaranteed any minimum number of hours, the fact that he is working fewer hours than he would like does not render him partially unemployed. When an individual is still working in a part-time job under the same terms and conditions as hired, he or she is not considered partially unemployed. See 871 IAC 24.23(26).

DECISION:

The representative's decision dated October 14, 2016, reference 02, is affirmed. Mr. Stanfield is not partially unemployed within the meaning of the law as he is still employed by Casey's Marketing Company in a part-time job under the same terms and conditions as he was hired.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs