

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

BOYD W STRONG
1705 RICHMOND RD NE
CEDAR RAPIDS IA 52402

COMPASS OF CEDAR RAPIDS LLC
c/o ADP-UCS
PO BOX 6501-8501
DIAMOND BAR CA 91765-8501

Appeal Number: 04A-UI-02865-B4T
OC: 01/25/04 R: 03
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 – Whether claimant is able and available for work
Section 96.4-3 – Whether claimant is still employed at the same hours and wages

STATEMENT OF THE CASE:

Boyd W. Strong appealed from an unemployment insurance decision dated March 3, 2004, reference 03, that held, in effect, the claimant was still employed in his job with Compass of Cedar Rapids, LLC, under the same terms and conditions as his original contract of hire and cannot be considered partially unemployed. Benefits were denied effective February 9, 2004.

A telephone conference hearing was scheduled and held on April 15, 2004 pursuant to due notice. Boyd W. Strong did not respond to the notice of hearing mailed to him by the Appeals Section by providing a telephone number of where he could be contacted at the time of the scheduled hearing. The claimant did not participate in the hearing held. Thomas

Fessenmeyer, Operation Director participated on behalf of Compass of Cedar Rapids, LLC. Taya Roos, Human Resource Assistant participated as a witness on behalf of the employer.

Official notice was taken of the unemployment insurance decision dated March 3, 2004, reference 03, together with the pages attached thereto (5 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Boyd W. Strong was initially employed with Compass of Cedar Rapids LLC as a stagehand on April 23, 1993. The claimant was initially hired as an on-call employee and provided services when operations were taking place at a local facility operated by Compass of Cedar Rapids, LLC. The claimant's wages at the present time were \$13.94 per hour and he remains employed on an on-call basis as needed under the same terms and conditions as he was originally employed with Compass of Cedar Rapids, LLC.

The administrative records disclose that the claimant filed his claim for benefits having an effective date of January 25, 2004. The claimant filed claims for benefits for the five-week period ending February 28, 2004 and reported wages in excess of his weekly benefit amount plus \$15.00 during each week. Unemployment insurance benefits were not paid to the claimant because the wages reported his receiving benefits.

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".

The evidence in the record clearly establishes that the claimant is presently employed in his job with Compass of Cedar Rapids, LLC under the same terms and conditions as his original contract of hire. The claimant is therefore able and available for work within the meaning of Iowa Code Section 96.4-3.

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.

Since the claimant is still employed in his part-time, on-call job at the same hours and wages as contemplated in the original contract of hire he is not working on a reduced workweek basis and cannot be considered partially unemployed.

The administrative law judge concludes that Boyd W. Strong is still employed in his job with Compass of Cedar Rapids, LLC under the same terms and conditions as his original contract of hire and cannot be considered partially unemployed all within the intent and meaning of Iowa Code Section 96.4-3.

DECISION:

The unemployment insurance decision dated March 3, 2004, reference 03, is affirmed. Boyd W. Strong is denied benefits effective as of February 9, 2004 until such time as he may requalify under the provisions of the Iowa Employment Security Law.

kjf/b