

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOHN GLENNON**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL NO. 14A-UI-04006-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/02/14  
Claimant: Appellant (5)**

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Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

John Glennon (claimant) appealed an unemployment insurance decision dated April 7, 2014 (reference 03), which held that he was not eligible for unemployment insurance benefits because he was still employed at the same hours and wages with Express Services, Inc. (employer) as in his original contract of hire. After hearing notices were mailed to the parties' last-known address of record, a hearing was held in Dubuque, Iowa on June 24, 2014. The claimant participated in the hearing. The employer did not participate in the hearing. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

The issue is whether the claimant is still working at the same hours and wages as in his original contract of hire.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant originally signed up for work with the employer on October 9, 2012 when he signed the End-of-Assignment Reporting Requirement, which advised him that he needed to check back in for additional work within three days after the completion of an assignment. He was placed in a day-to-day assignment with Uelner Precision Tool and Dies on January 27, 2014 and had to regularly call in for work. The claimant also worked for a school district as a part-time substitute teacher and the initial foreman at Uelner accommodated him when he was able to work as a substitute.

A new foreman was hired at Uelner and the new foreman was not so accommodating. The claimant called in on March 7, 2014 to report that he would not be at work that day because he could work as a substitute. He was advised not to return to the assignment so he assumed he was laid off work. The claimant contends he had no memory of the requirement to check in for additional work. He testified in the hearing that the employer should have known he was available since his availability had not changed. However, the claimant stopped checking in for work on a daily basis. He testified that he did not check in for work until the following week but

he also testified that the employer offered him “zero employment opportunities of any kind” from March 7, 2014 through April 2, 2014. The claimant’s focus appears to be that it is the employer’s duty to offer him work and they did not do that until shortly before the fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able and available for work. For an individual to be eligible to receive benefits, he must be able to work, available to work, and earnestly and actively seeking work. Iowa Code §96.4-3; 871 IAC 24.22(2). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

The claimant is no longer employed at the same hours and wages as he was in the original contract of hire with this employer. The evidence shows he was checking in on a daily basis for continued work with a client company. Since that assignment ended, the claimant has not made the same effort to check back in with the employer for additional work. He believes he was laid off work, and as a result, considers it the employer’s responsibility to seek him out to offer him work.

Additionally, the claimant is often busy working as a substitute teacher and cannot seek or accept work when he is already working. Consequently, the claimant does not meet the availability requirements of the law and benefits are denied.

**DECISION:**

The unemployment insurance decision dated April 7, 2014, (reference 03), is modified with no effect. The claimant does not meet the availability requirements of the law and benefits are denied at this time.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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