

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS FITES

Claimant

APPEAL NO: 08A-UI-03521-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER SPORTING GOODS INC

Employer

**OC: 02-17-08 R: 02
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 3, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 5, 2008. The claimant participated in the hearing. Bob Lemon, Co-Owner/President and Tom Penn, Office Manager/Accountant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a part-time retail sales and buyer for Decker Sporting Goods. Until three years ago he traveled in January and February when the employer's business was slow. He was not guaranteed any hours. He rarely worked in February 2008 and the first two weeks of March 2008 have been slow as well so he has received few hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is working fewer hours than contemplated in the original contract of hire.

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 hired as a part-time retail salesperson and buyer. There has been no separation from his part-time employment and the claimant is currently working for this employer at reduced hours than those contemplated in the original contract of hire, which does not have to be an actual written contract. Therefore, the claimant is not disqualified from receiving partial unemployment insurance benefits and benefits are allowed provided he is otherwise eligible.

DECISION:

The April 3, 2008, reference 01, decision is affirmed. The claimant is employed at reduced hours from those in his original contract of hire and therefore is qualified for benefits, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs