STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 5, 2020, 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 March 5, 2020. The claimant participated in the hearing. Mark Dimit, President, 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 was hired as a part-time seasonal truck driver for Dimit Farms September 27, 2019. He suffered a heart attack September 29, 2019, and had surgery October 6, 2019. He returned to work for the employer in November 2019. He worked until the season ended due to a lack of work December 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages as 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".

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.

The claimant was hired as a part-time seasonal truck driver and separated from that employment December 5, 2019, due to a lack of work. Consequently, the claimant is not employed with this employer at the same hours and wages and is eligible for benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The February 5, 2020, reference 01, decision is affirmed. The claimant is not employed at the same hours and wages as in his original contract of hire. Benefits are allowed provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn