

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

JOVANY JACQUES  
205 W 4<sup>TH</sup> ST  
WEST LIBERTY IA 52776

CFA STAFFING INC  
1902 BROADWAY ST  
IOWA CITY IA 52240-7001

Appeal Number: 05A-UI-02669-BT  
OC: 02/13/05 R: 04  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

CFA Staffing, Inc. (employer) appealed an unemployment insurance decision dated March 10, 2005, reference 04, which held that Jovany Jacques (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2005. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Juan Segura, Staffing Coordinator.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time assembler/packager on March 24, 2004. He did not make himself available from February 7, 2005 until March 1, 2005, at which time he contacted the employer and requested additional work. The claimant continues to be employed in the same capacity as in his original contract of hire.

The claimant filed a claim for unemployment insurance benefits effective February 13, 2005 but has not received benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for 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".

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 assembler and packager. He continues to be employed at the same hours and wages as in his original contract of hire but was not available from February 7, 2005 through March 1, 2005. The claimant is disqualified from receiving benefits for this same time period.

#### DECISION:

The unemployment insurance decision dated March 10, 2005, reference 04, is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire but is disqualified from receiving benefits for the three-week period ending February 26, 2005, as he did not meet the availability requirements of the law. There is no overpayment as a result of this decision.

sdb/sc