

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M MILLER**  
Claimant

**APPEAL NO. 13A-UI-12589-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WORKSOURCE INC**  
Employer

**OC: 07/21/13**  
**Claimant: Respondent (3)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

Workforce, Inc. filed a timely appeal from a representative's decision dated November 1, 2013, reference 03, which held claimant eligible to receive unemployment insurance benefits effective October 6, 2013 finding that the claimant was still employed part-time while working on call when work was available but finding that the claimant was not performing services in the same pattern of employment as in the base period, therefore, subjecting the employer's account to charging. After due notice was provided, a telephone hearing was held on December 3, 2013. Although notified, the claimant did not participate. The employer participated by Ms. Kasandra Pickett, Recruiter.

**ISSUE:**

The issue is whether the claimant is still employed part time in the same hours and wages as in the original agreement of hire.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: The claimant began employment with this temporary employment service in April 2013 and continues to be employed at the time of hearing. Mr. Miller was not hired for any particular job assignment but is assigned to various job assignments depending on the availability of assignments and the willingness of the claimant to accept the assignments. Mr. Miller is not guaranteed any minimum number of working hours each week by Worksource, Inc., however, the number of hours is governed by the particular assignment that is offered and the willingness of the claimant to accept the assignment.

In some weeks Mr. Miller has worked fewer hours than agreed for that assignment, because Mr. Miller has been unavailable to work the hours available to him for personal reasons. Mr. Miller has also enrolled in school limiting his availability to accept assignments that he would previously have accepted.

The company agrees that Mr. Miller was potentially eligible to receive unemployment insurance benefits effective October 6, 2013 because a previous assignment had ended, the claimant had established his availability for additional assignments, and Worksource, Inc. had no assignments for Mr. Miller at that time.

The employer disagrees that Mr. Miller is employed part time or on call as he is guaranteed no minimum number of hours per week each week and agreed to become a temporary employee of a temporary service at the time of hire. The employer further maintains that any change in the manner that Mr. Miller is performing services is different from the manner that he performed services in the past, because Mr. Miller has been unwilling to work hours available to him or has limited his availability to work hours for his own personal reasons.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Miller is employed in a part-time job at the same hours and wages as contemplated in the original contract of hire. It does not.

The evidence in the record clearly establishes that Mr. Miller was employed as a temporary employee of a temporary employment agency and the number of hours available to him each week is governed by the work available and the willingness of Mr. Miller to accept the work assignments offered to him. As a temporary employee of a temporary service the claimant's working hours fluctuate due to the business needs of Worksource, Inc's clients and the willingness of Mr. Miller to accept assignments offered to him. The claimant is potentially eligible to receive unemployment insurance benefits during weeks that he is unemployed due to lack of work after establishing his availability for work with the employer and the employer having no assignments for him. Claimant is, thus, not eligible to receive partial unemployment insurance benefits if the claimant has not been guaranteed a minimum number of hours of work on any particular week or if the claimant has made himself unavailable to accept all the working hours made available to him in a job assignment.

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.

For the above-stated reasons, the administrative law judge concludes that the claimant cannot be considered to be partially unemployed as he is employed as a temporary worker of a temporary employment service as contemplated in the agreement of hire. There was no guarantee of a minimum number of hours the claimant would be assigned each week at the time that he was initially hired by Worksource, Inc. The number of hours available to the claimant is dependent on the job offer each week and the claimant's acceptance of the job offer. Claimant may be eligible to receive unemployment insurance benefits during weeks when there is a lack of work but is not eligible to receive benefits for reduced work weeks when he does not make himself available to work all the hours as previously accepted in that work assignment.

Claimant is potentially eligible to receive unemployment insurance benefits based upon lack of work beginning October 6, 2013 but is not eligible to receive partial unemployment insurance benefits as a temporary worker of a temporary employment firm as there was no guarantee at the time of hire that he would receive any minimum number of working hours each week in the future.

**DECISION:**

The representative's decision dated November 1, 2013, reference 03, is affirmed as modified. The portion of the determination holding the claimant to receive unemployment insurance benefits effective October 6, 2013, is affirmed. Claimant is potentially eligible to receive benefits at that time due to a separation due to lack of work. The determination is modified to find that the claimant is not eligible to receive partial unemployment insurance benefits based upon part-time or on-call work with this employer.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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