

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY L FREY**  
Claimant

**APPEAL NO. 11A-UI-02166-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 10/17/10**  
**Claimant: Appellant (1)**

Section 96.4-3 – Still Employed Same Hours and Wages  
871 IAC 24.23(26) – Part-time Job – Same Hours/Same Wages

**STATEMENT OF THE CASE:**

Anthony Frey filed a timely appeal from a representative's decision dated February 14, 2011, reference 05, that denied benefits because the claimant was still employed part time at the same hours and wages. After due notice was issued, a telephone conference hearing was scheduled for and held on March 30, 2011. The claimant participated personally. The employer participated by Ms. Sheryl Knutson, Employee Relations Manager.

**ISSUE:**

The issue in this matter is whether the claimant is still employed part time at the same hours and wages.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: The claimant worked for this employer beginning May 22, 1995. Mr. Frey at that time was hired as a part-time unit clerk. On August 19, 2004 by his own request Mr. Frey was changed to an on-call status working only the hours that are available to him with Mercy Hospital. The claimant is not guaranteed any minimum number of working hours in his on-call position. The claimant continues to be paid at the same rate or hire than at the time that he began employment.

By agreement between the parties Mr. Frey has been assigned to work on a part-time/on-call basis. The claimant continues to be employed in that capacity now working part-time/on-call hours that are available and his wage remains the same or higher. Mr. Frey also works in a part-time capacity for other employers and also attends school.

**REASONING AND CONCLUSIONS OF LAW:**

Based upon the evidence in the record the administrative law judge concludes that the claimant is disqualified for being unavailable for work because he is still employed in a part-time job at

the same hours and wages as agreed upon between the parties. The claimant is not working on a reduced workweek or different from the contract of hire at the time of hearing.

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 reasons stated herein the administrative law judge concludes that the claimant is disqualified from benefits effective January 9, 2011 for being unavailable for work. He is still employed on-call/part-time at the same hours and wages as contemplated in the agreement between the parties.

**DECISION:**

The representative's decision dated February 14, 2001, reference 05, is affirmed. The claimant is still employed in a part-time/on-call capacity at the same hours and wages as contemplated between the parties. He is therefore disqualified from benefits for being unavailable for work.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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