

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES ROBUCK
Claimant

APPEAL NO: 15A-UI-13496-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARKING INC
Employer

**OC: 11/15/15
Claimant: Respondent (2)**

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 December 8, 2015, 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 December 30, 2015. The claimant participated in the hearing. Will Hays, Director of Operations, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire and whether he is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time booth attendant for Parking Inc. January 19, 2003. On October 1, 2014, the claimant was switched to part-time because the employer lost a client/facility and had to place another full-time employee with more seniority in the claimant's full-time position so that employee could remain full time. The claimant has been working part-time, Saturdays and Sundays, 11:00 p.m. to 7:00 a.m.

The claimant does not have a driver's license and cannot work Monday through Friday because he does not have transportation. The employer has offered him additional hours on at least three occasions since July 2015 but the claimant refused each offer because he does not have reliable transportation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire and is not able and available for work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) and (4) provide:

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.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The claimant was hired as a full-time booth attendant in 2003 and worked Monday through Friday until October 1, 2014, at which time he became a part-employee so the employer could accommodate another full-time employee with more seniority. The claimant's switch to part-time became his new contract of hire. In Olson v. EAB, 460 N.W.2d 865 (Iowa App. 1990), the claimant's resignation seven months after a substantial change in the contract of hire was deemed a disqualifiable event because the claimant was held to have acquiesced in the changes. While the claimant was unhappy about the change in the present case, he agreed to it by continuing to work for the employer. Thus, this case is similar to Olson as there was a substantial change in the claimant's contract of hire, but rather than voluntarily leaving his position with the employer, the claimant remained and has continued working for the employer since the change in his hours October 1, 2014. Consequently, that date became his new contract of hire. There has been no change in the claimant's hours and wages since October 1, 2014. As a result, the claimant cannot be considered partially unemployed.

DECISION:

The December 8, 2015, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment and the employer's account is not subject to charge.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css