

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARRY DOE**  
Claimant

**APPEAL NO: 20A-UI-11549-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUR OAKS FAMILY AND CHILDRENS S**  
Employer

**OC: 06/28/20**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 8, 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 November 13, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Stephanie Antonelli, Human Resources Talent Manager and Jennifer Groenwold, Employer's Representative, participated in the hearing on behalf of the employer. Kristen Beck, Equifax Manager, observed the hearing.

**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 youth counselor for Four Oaks Family and Children October 4, 2017, and continues to be employed in that capacity with no change in his hours or wages. As a part-time employee the claimant is not guaranteed a certain number of hours. The open hours are posted and part-time employees sign up for the hours they want to work.

The claimant worked 12.25 hours the week of July 5, 2020; he worked 12.50 hours the week of July 12, 2020; he worked 15.50 hours the week of July 19, 2020; he worked 14.25 hours the week of July 26, 2020; he worked 29.50 hours the week of August 2, 2020; he worked 18.50 hours the week of August 9, 2020; he did not work any hours the week of August 16, 2020; he worked 14.00 hours the week of August 23, 2020; he did not work any hours the weeks of August 30, 2020 and September 6, 2020, he worked 13.75 hours the week of September 13, 2020; he worked 13.25 hours the week of September 20, 2020; he worked 28.00 hours the week of September 27, 2020; he worked 21.25 hours the week of October 4, 2020; he worked 24.00 hours the week of October 11, 2020; and he worked 13.25 hours the week of October 18, 2020.

The claimant has not reported any wages since filing his claim effective June 28, 2020.

**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.

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 youth counselor. There has been no separation from his part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on his part-time employment.


The issue of the claimant failing to report his wages to the Department is remanded for an initial investigation and determination.

**DECISION:**

The September 8, 2020, 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. The claimant is overpaid benefits in the amount of \$7,516.00 for the 19 weeks ending October 17, 2020.

**REMAND:**

The issue of the claimant failing to report his wages to the Department is remanded for an initial investigation and determination.



---

Julie Elder  
Administrative Law Judge

November 20, 2020  
Decision Dated and Mailed

je/scn