

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB W RAY
Claimant

APPEAL NO. 07A-UI-01046-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOREST CITY FOODS INC
Employer

OC: 12-24-06 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 12, 2007. The claimant did not participate. The employer did participate through Doug Gust, Owner/Manager.

ISSUE:

Is the claimant employed at the same hours and wages as at the time of hire?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier/stocker part-time beginning January 2, 2007 through date of hearing. The claimant was employed full-time until May 13, 2006, when he voluntarily quit to take another full time job. The claimant was rehired on a part-time basis on January 2, 2007. He has continued to work part-time with no change in his hours or wages. He was not guaranteed any particular amount of hours when he was hired.

The claimant also works full-time for another employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work 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 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 is working the same hours and for the same wages as when he was hired part-time on January 2, 2007 and is, thus, still employed at the same hours and wages. Accordingly, benefits are denied.

The claimant received benefits for the week ending December 30, 2006, which was before he was hired part-time by this employer. There is no overpayment of benefits to the claimant.

DECISION:

The January 25, 2007, reference 01, decision is reversed. The claimant is not able to work and available for work effective January 2, 2007. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css