

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN D THYR
Claimant

APPEAL 21R-UI-20887-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX COUNTY
Employer

OC: 05/17/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 3, 2020 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was still employed for the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on November 12, 2021. The claimant, Kevin Thy, participated. The employer, Sioux County, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits file including the fact-finding documents.

ISSUES:

Is the claimant able to work and available for work?
Is claimant employed for the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed part-time for this employer from January 2018. Claimant is no longer employed with Sioux County. Claimant was a chef and would be called in to help cook for the inmates at the jail when needed. When claimant worked, it was a 12-hour shift. Claimant was not guaranteed a minimum number of hours at the time of his hire. Claimant was never placed on a regular schedule with Sioux County.

No initial investigation and determination has been made regarding claimant's separation from Sioux County.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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.

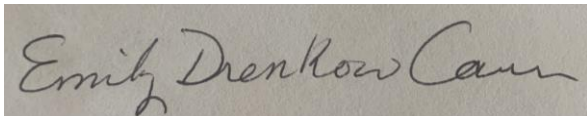
The claimant was still employed in his part-time job at the same hours and wages as contemplated his original contract for hire as of May 17, 2020. Claimant was not guaranteed a minimum number of hours at the time of his hire. Claimant is not partially unemployed.

DECISION:

The August 3, 2020 (reference 02) decision is affirmed. Claimant was still employed in his part-time job at the same hours and same wages as in his original contract of hire and was therefore not partially unemployed as of May 17, 2020.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Emily Drenkow Carr
Administrative Law Judge

December 14, 2021

Decision Dated and Mailed

ed/abd