

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL D DICKEY**  
Claimant

**APPEAL NO. 08A-UI-01688-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE WOOD SHAVINGS INC**  
Employer

**OC: 12-09-07 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 February 18, 2008, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 5, 2008. The claimant did not participate. The employer did participate through Colleen Adkins, Human Resources Manager.

**ISSUE:**

Is the claimant employed at the same hours and wages as when hired?

**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 truck driver, full-time, beginning September 19, 2007, through date of hearing, as the claimant remains employed. The claimant was hired to work full time and, for the most part, has worked full time from 7:00 a.m. through 3:30 p.m., Monday through Friday. The claimant was off work on December 24 and 25 for the holiday and received only one day of holiday pay. Neither the claimant's hours of work nor his hourly wages has been reduced.

**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 still employed at the same hours and wages as when he was hired. He has never been a part-time or an on-call worker. Thus, the claimant is not considered able to and available for work and accordingly, benefits are denied.

**DECISION:**

The February 18, 2008, reference 03, decision is reversed. The claimant is not able to work and available for work effective December 30, 2007. Benefits are denied.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw