

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAM NICKS
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 16A-UI-08878-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/10/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the August 8, 2016, (reference 01) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 1, 2016, at 3:00 p.m. Claimant participated personally. Employer participated through staffing consultant Valerie Hefel. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing firm. Claimant began working for employer on May 25, 2016. He began working at his current assignment on May 25, 2016. The client had a shut down from July 12 through 15, July 25 through 29, and August 5 through 14, 2016. Claimant is still employed by employer.

The timing of the shutdowns was communicated to claimant by the client company. Claimant did not contact employer within three working days of July 11, 2016, to request another assignment as required by written policy. (Exhibit 1) Likewise, claimant did not request an additional assignment during any of the subsequent shutdowns.

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 and is not considered partially unemployed effective July 12, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 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) 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.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Here, claimant is still employed by employer at the same hours and wages as contemplated in the original contract of hire. Claimant is employed by Express Services Inc, not the client company. Therefore, claimant is not available for work with another employer and is not considered unemployed under the law.

DECISION:

The August 8, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 10, 2016. Benefits are denied.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/