

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON BROWN**  
Claimant

**APPEAL NO. 08A-UI-01052-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOWLERAMA LANES LTD**  
Employer

**OC: 12/23/07 R: 02**  
**Claimant: Respondent (4)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Bowlerama Lanes Limited (employer) appealed an unemployment insurance decision dated January 28, 2008, reference 02, which held that Aaron Brown (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 13, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through owner Dan Bobenhouse. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is working at the same hours and wages as in his original contract of hire.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time mechanic and general laborer in approximately 2006 and continues in that same capacity, with no change in his hours or wages. He could work more hours if he wanted to do so but does not want more hours. The claimant is laid off from his full-time employer and has qualified to receive unemployment insurance benefits based on that separation.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for 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".

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 was hired as a part-time mechanic and general laborer and there has been no separation from his part-time employment. He is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. Consequently, the claimant is disqualified from receiving benefits from this employer. However, the claimant is separated from his full-time employer and was previously receiving benefits based on separation from his full-time employment.

**DECISION:**

The unemployment insurance decision dated January 28, 2008, reference 02, is modified in favor of the appellant. No disqualification is imposed on the claimant, and no charges shall be made to the account of this employer.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css