

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL PAULSEN
Claimant

APPEAL NO. 10A-UI-16116-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUNKERS FEED & SUPPLY INC
Employer

OC: 10-24-10
Claimant: Respondent (1-R)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 19, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 13, 2011. The claimant participated in the hearing. Curt Bunkers, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time truck driver by Bunkers Feed & Supply October 9, 2010. After the harvest was over, the claimant was laid off for three weeks and filed for and received unemployment benefits the weeks ending October 30, November 6, and November 13, 2010. He was recalled to work November 16, 2010, but quit his job December 20, 2010. The issue of the claimant's separation from this employer has not yet been adjudicated and is remanded to the Claims Section for an initial determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was laid off beginning the week ending October 30, 2010, through November 13, 2010.

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 laid off beginning the week ending October 30, 2010, through November 13, 2010. He was recalled to work November 16, 2010. Consequently, he is eligible for benefits for the three-week period ending the week ending November 13, 2010.

The claimant has since separated from this employer. The issue of the claimant's separation is remanded to the Claims Section for an initial determination and adjudication.

DECISION:

The November 19, 2010, reference 01, decision is affirmed. The claimant is eligible for benefits for the three-week period ending November 13, 2010. The issue of the claimant's separation from this employer is remanded to the Claims Section.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw