

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN BABBERL
Claimant

APPEAL NO: 14A-UI-13480-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

OC: 11/23/14
Claimant: Respondent (1)

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 December 24, 2014, reference 02, 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 27, 2015. The claimant participated in the hearing. Stephanie Morrison, Administrator and Barbara Toney, Employer Representative, 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 full-time sales customer representative for Thomas L. Cardella & Associates September 24, 2010. The claimant's job involves calling other businesses for the client. The client chose not to have calls made because of the Thanksgiving holiday the afternoon of November 26, and all day November 27 and November 28, 2014, off because of the Christmas holiday December 24, 25 and 26, 2014, and off because of the New Year holiday January 1 and January 2, 2014. Consequently, the claimant was not paid for those dates.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire for the three weeks stated above.

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", 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".

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 hired as a full-time sales customer representative. There has been no separation from his full-time employment but the claimant did not work the same hours as contemplated in the original contract of hire the week ending November 29, 2014, the week ending December 27, 2014, and the week ending January 3, 2015, because he was not allowed to work as the client did not want its customers called over the holidays. The claimant is eligible for benefits for the three weeks listed above because he was not allowed to work his full-time hours due to a decision made by the client and enforced by the employer.

DECISION:

The December 24, 2014, reference 02, decision is affirmed. The claimant did not work the same hours as contemplated in his original contract of hire the week ending November 29 2014, the week ending December 27, 2014, and the week ending January 3, 2015, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs