

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARK FITZGERALD**  
Claimant

**AEROTEK INC**  
Employer

**APPEAL NO. 14A-UI-04004-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/29/13  
Claimant: Appellant (1)**

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Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Mark Fitzgerald (claimant) appealed an unemployment insurance decision dated April 9, 2014, (reference 02), which held that he was not eligible for unemployment insurance benefits because he is working too many hours with Aerotek, Inc. (employer) to be considered unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2014. The claimant submitted a written statement in lieu of participation. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable or unable to work.

**FINDINGS OF FACT:**

The administrative law judge, having reviewed the claimant's appeal letter and considered all of the evidence in the record, finds that: The claimant was allowed benefits based on his September 17, 2013, separation from Associated Materials. He began working for the employer herein in the fourth quarter of 2013. The claimant submitted a written appeal letter dated April 15, 2014, stating that he would not be able to attend a phone hearing because he is working. He could not participate in the fact-finding interview either because he was working but requested his letter be read into the record. In his letter dated March 31, 2014, the claimant stated that, "I have been getting forty (sic) hours as of late." The claimant was earning \$15.62 per hour at his previous job but is now only earning \$10.00 per hour.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, he must be able to work, available to work, and earnestly and actively seeking work. Iowa Code §96.4-3; 871 IAC 24.22(2). An individual is disqualified for benefits if they are working to such a degree that they are removed from the

labor market. 871 IAC 24.23(23). While the claimant may not be earning as much money in his current job as he was in his former job, he is working full-time hours. He fails to meet the availability requirements. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated April 9, 2014, (reference 02), is affirmed. The claimant fails to meet the availability requirements of the law and benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs