

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN PORTER

Claimant

APPEAL NO: 09A-UI-04389-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALLET COMPANIES INC

Employer

OC: 02-15-09

Claimant: Respondent (2)

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 March 10, 2009, 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 April 14, 2009. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Roger Wessely, On-Site Supervisor and Barbara Hamilton, 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 pallet sorter for Pallet Companies February 19, 2008 and continues to be employed in that capacity with no change in his hours or wages. The claimant works from 4:00 p.m. to 2:00 a.m. On February 19, 2009, he left the job at 4:02 p.m., never clocking in for work that day. He left the employer a voice mail February 20, 2009, at 8:00 a.m. and said he would not be in for his shift that night but would be in for his next scheduled shift February 24, 2009. The local clinic called the employer February 20, 2009, and stated the claimant was indicating he had a worker's compensation injury and the clinic asked for permission to treat him. The employer said it had not talked to the claimant yet so he gave permission to treat and then called the claimant and told him it had give the clinic permission to treat him but he needed to have a post accident drug and alcohol screen. The claimant said he had left the clinic and the employer told him the testing had to be done that day and the claimant said he could not go back because he was experiencing car problems. The employer told him to get to the clinic by close of business that day and the claimant said he could not go that day or to another clinic Saturday or Sunday. On February 23, 2009, the clinic called the employer again seeking permission to treat the claimant and asked the clinic to perform a drug and

alcohol screening on him. He was diagnosed with a lumbar strain or sprain and placed on restricted duty. The employer put him on first shift and gave him light-duty work February 25 and 26, 2009. He could have worked light duty February 24, 2009, as well if he had completed the drug and alcohol screen February 20, 2009, as the employer instructed him to do because the employer would have received the negative test results in time to put him back to work at the beginning of his workweek, which was Tuesday, February 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at 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.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was hired as a full-time pallet sorter. There has been no separation from his employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The only day the claimant did not work was February 24, 2009, due to his refusal to take the drug and alcohol screen when told to do so by the employer February 20, 2009. As a result the employer did not receive the drug and alcohol testing results until February 24, 2009, causing him to miss one day of work that week. Consequently, benefits must be denied.

DECISION:

The March 10, 2009, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not eligible for benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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