

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DONALD H SCHMITZ
3261 DUBUQUE
DES MOINES IA 50317

RACING ASSOCIATION OF CENTRAL
IOWA – PRAIRIE MEADOWS
PO BOX 1000
ALTOONA IA 50009-1000

Appeal Number: 05A-UI-11324-C
OC: 10/09/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Donald Schmitz filed an appeal from a representative's decision dated November 2, 2005, reference 01, which denied benefits on a finding that he was still employed under the same terms and conditions. After due notice was issued, a hearing was held on November 22, 2005 in Des Moines, Iowa. Mr. Schmitz participated personally. The employer participated by Brian Coy, Human Resources Generalist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Schmitz began working for Prairie Meadows in

February of 1989. He was hired to work three to four days a week as a teller. In 1995, he became a full-time employee working approximately 38 hours each week. On or about October 8, 2005, Mr. Schmitz voluntarily opted to reduce his status to part time. He was not advised by a doctor that he needed to reduce his work activity.

Mr. Schmitz knew when he went to part-time status that there would not be as much work for him as there had been when he was full time. He was told he might be scheduled for only one day per month. More work is available for part-time employees from April through October each year when there is live racing. Less work is available from November through March. Mr. Schmitz filed a claim for job insurance benefits effective October 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Schmitz is entitled to receive job insurance benefits on his claim filed effective October 9, 2005. It is true that he is working fewer hours than he had been working before filing his claim. However, it was his choice to be underemployed. He knew that changing his status from full time to part time would result in fewer hours of work each week. He was told he could be working as little as one day per month. In spite of this information, Mr. Schmitz did not opt to remain a full-time employee. The reduction of the workweek was not at the employer's initiative.

The employer agreed to reduce Mr. Schmitz's status at his request. The employer continues to provide him with part-time work as it is available. Because the employer is still providing employment under the terms and conditions as they existed on October 8, 2005, Mr. Schmitz is not considered partially unemployed. Therefore, he is not available for work within the meaning of Iowa Code section 96.4(3). See 871 IAC 24.23(26). For the reasons stated herein, benefits are denied.

Mr. Schmitz appealed the denial of job insurance benefits because he is aware of another individual from Prairie Meadows who received benefits under circumstances identical to his a few years ago. The administrative law judge has no details concerning the other individual's claim or the reason for the allowance of benefits. Therefore, the administrative law judge can offer no explanation as to why the other individual was found eligible to receive benefits.

DECISION:

The representative's decision dated November 2, 2005, reference 01, is hereby affirmed. Mr. Schmitz is not entitled to job insurance benefits because he is still employed in his part-time job under the terms and conditions agreed to and is voluntarily underemployed.

cfc/tjc