

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC R CONNOR
Claimant

APPEAL NO. 11A-UI-02867-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 01/30/11
Claimant: Respondent (4)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Temp Associates filed a timely appeal from the representative's decision dated February 28, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning January 30, 2011 upon a finding that the claimant is available for work during the same hours in which he earned his base period wage credits. After due notice, a telephone hearing was held on March 31, 2011. Although duly notified the claimant did not participate. The employer participated by Ms. Holly Jacobi, Account Manager. Employer's Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Eric Connor is employed by Temp Associates. His employment began on March 9, 2009 and the claimant continues to be employed at the same hours and wages at the time of hearing. Mr. Connor has been assigned to a regular long-term assignment with Terry and Sons Painting Company. Mr. Connor is assigned to work as a painter normally working assigned hours between 8:00 a.m. to 5:00 p.m., Monday through Friday.

Mr. Connor works at the client employer company that is apparently owned by a person who is a relative of Eric Connor. Temp Associates regularly issues weekly paychecks to Mr. Connor for his services performed at the client employer and the temporary service has not been made aware of by Mr. Connor that the assignment has ended or that there have been lapses in the assignment. As the employee of a temporary employment firm Mr. Connor agreed to contact the temporary service within three working days of the end of any assignment to inform the employer that the assignment had ended or lapsed and to look for other work. Mr. Connor has not contacted Temp Associates since his initial assignment in March 2009 with Terry and Sons Painting.

The employer does not disagree with the determination that Mr. Connor may be eligible for benefits based upon the hours that he may be attending school, however, the employer believes that its account should not be subject to charging as the company has regularly had work available to Mr. Connor at the same hours and wages as agreed in the original agreement of hire and the employer has not been notified of any lapses in employment or that the assignment has ended by Eric Connor.

The employer notes that Mr. Connor did not participate in the fact finding and therefore the temporary employment service is unaware of the basis for the determination that is under appeal. The employer strenuously maintains however that its account should not be charged as regular work has been available to Mr. Connor and that they have not been informed contrary by Mr. Connor as required by his contract of employment.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the claimant is able and available for work.

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".

Inasmuch as there is no evidence to show that Mr. Connor's school hours have either limited his employability or not, the administrative law judge concludes that evidence in the record is not sufficient to overturn the determination finding that the claimant was generally available based upon the school hours that he attended when his base period wage credits were earned.

The administrative law judge does conclude, however, based upon the evidence in the record that Temp Associates could be subject to charging for any partial unemployment benefits received by Mr. Connor. The employer's witness testified under oath that Mr. Connor has been regularly employed by Temp Associates each week and assigned to work at Terry and Sons Painting, a client company of Temp Associates. Ms. Jacobi further testified that Mr. Connor has not contacted the temporary service to indicate that his hours have been curtailed or that there has been a lack of work at his job assignment as the claimant is required to do under the provisions of the contract signed between the parties at the time Mr. Connor began employment with the temporary service.

Ms. Jacobi further testified that work is regularly available to Mr. Connor through Temp Associates and that if the claimant would have informed the temporary service of any lack of working hours or that the assignment had ended the temporary service would have made immediate efforts to reassign Mr. Connor to different available work. The employer further

asserts that the claimant continues to be employed in the same manner or in the same wages as agreed upon at the time of hire and that the employer should not be subject to potential charging for any unemployment insurance benefits that may have been available to the claimant prior to today's hearing date, March 31, 2011.

Inasmuch as the evidence in the record establishes that there was no lack of work available to Mr. Connor from Temp Associates and that work was available to the claimant through Temp Associates, the administrative law judge concludes that the employer should not be subject to potential charging for unemployment insurance benefits paid to Mr. Connor based upon wage credits earned from Temp Associates.

DECISION:

The representative's decision dated February 28, 2011, reference 01, is affirmed as modified. The portion of the determination finding the claimant to be potentially eligible for benefits is affirmed. The decision is modified to hold the employer non-chargeable for benefits paid to the claimant because work continued to be available to Mr. Connor through March 31, 2011. The fact-finder's decision is affirmed as modified.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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