

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD ROBERTS**  
Claimant

**APPEAL NO. 09A-UI-11157-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**  
Employer

**Original Claim: 11/23/08  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Richard Roberts (claimant) appealed an unemployment insurance decision dated July 27, 2009, reference 06, which held that he was not eligible for unemployment insurance benefits because he is still employed at the same hours and wages with FBG Service Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2009. The claimant participated in the hearing. The employer participated through Mike Bowden, Area Supervisor, and employer representative Jennifer Coe. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is working the same hours and wages as in his original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time general cleaner on December 22, 2008 and continues to work in that same capacity. There has been no separation from employment. However, the claimant has voluntarily elected to reduce his full-time hours to a floater position effective August 25, 2009 until he can train someone to take his place. He plans to voluntarily quit after that since he cannot handle the work load as a result of a non-work-related back injury.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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".

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.

The claimant was hired as a full-time cleaner. There has been no separation from his employment and he is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. The claimant is disqualified from receiving benefits from this employer.

**DECISION:**

The unemployment insurance decision dated July 27, 2009, reference 06, is affirmed. The claimant does not meet the availability requirements of the law and does not qualify for unemployment insurance benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw