

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A THOMAS
Claimant

APPEAL NO: 10A-UI-10532-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 05/23/10
Claimant: Appellant (1-R)

Section 96.4-3 – Able and Available
Section 96.19-38 – Partial Unemployment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 23, 2010, reference 01, that held he was not eligible for benefits effective May 23, 2010, because he was still employed and may not be considered as partially unemployed. A telephone hearing was held on September 10, 2010. The claimant participated. Marcanne Lynch, HR Director, and Traci Miner, Program Administrator, participated for the employer. Official notice was taken of the employer documents submitted on September 8, and the claimant did not object.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time driver/support technician from November 4, 1997 until April 2009. The employer advised he could no longer drive for the employer, as he became uninsurable due to several accidents. The employer offered the claimant a part-time, non-driving position that he accepted, as a support living technician. There was no guarantee of hours made to the claimant.

The claimant continues to work the same part-time position through the date of this hearing. The claimant filed his claim in late May when the employer had no hours of work to offer him. The claimant did not work for about five weeks (week ending July 3, 2010), but has resumed his more regular part-time work in July and through the date of this hearing.

The claimant has received unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code section 96.4-5-c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

The administrative law judge concludes that the claimant is not eligible for benefits effective May 23, 2010, as he is not partially unemployed due to working the same part-time job now, as he did during the base period of his employment.

The claimant accepted the demotion from full-time to part-time work without any guaranteed hours in April 2009, and he is still working the same part-time job through the date of this hearing. The claimant's employment status does not meet the definition of partial unemployment. The employer is not obligated to provide the claimant with any certain hours of work in any given week, and when it does not, the claimant is not considered as unemployed.

DECISION:

The department decision dated July 23, 2010, reference 01, is affirmed. The claimant is not eligible for benefits effective May 23, 2010. The issue of an overpayment is remanded to Claims for review and decision.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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