

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TITUS L FAIR
Claimant

APPEAL NO: 11A-UI-11723-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HJD SUBTENANT LLC
HOTEL JULIEN DUBUQUE**
Employer

**OC: 07/17/11
Claimant: Appellant (4/R)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Titus L. Fair (claimant) appealed a representative's September 1, 2011 decision (reference 01) that concluded he was qualified to receive unemployment insurance benefits in conjunction with his employment with HJD Subtenant, L.L.C. / Hotel Julien Dubuque (employer) . After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Anna Hilfer appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant employed by the employer for less than his usual hours and wages even though he remained able and available for work, and was he therefore eligible for full or partial unemployment insurance benefits during that employment?

FINDINGS OF FACT:

The claimant started working for the employer on August 10, 2009. He originally worked as a banquet and line cook. Because of a reduction in kitchen hours, as of about August 2010 the claimant transferred to a position working in riverboat security on a part time on Friday and Saturday overnight shifts, about 16 hours per week. In about October 2010 the available hours in the kitchen picked back up, and the claimant was offered the opportunity to transfer back to the kitchen. He declined at least in part because he had returned to school in the fall of 2010.

The claimant began calling off shifts occasionally in February and March 2011. In June and July he began calling of a shift about once per week. The employer continued to make available the same 16 hours to the claimant as it had since August 2010. The claimant established an unemployment insurance benefit year effective July 17, 2011, seeking partial

benefits for the weeks in which his earnings from the employer did not equal or exceed his weekly benefit amount of \$101.00 plus \$15.00.

Another representative's decision was issued on October 19, 2011 (reference 03), which concluded that there had been a non-disqualifying separation from employment as of September 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to him. Rather, he must remain available for work on the same basis as when he was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The claimant's pattern of employment with the employer for his 2011 claim year was the Friday and Saturday overnight shifts providing 16 hours of work. The employer continued to make that work available to the claimant. The reason the claimant's earnings for the benefit weeks between July 17, 2011 and September 10, 2011 were below the \$116.00 partial eligibility level is because he was calling off work and was not able and available to work the number of hours the employer had available to him, and he is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

This decision only applies to the claimant's eligibility for partial unemployment insurance benefits during his employment with the employer. As that employment has ended, a new issue has become apparent as to whether the claimant is otherwise generally able and available for work after his September 8, 2011 separation from employment. This issue has not been previously determined, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated September 1, 2011 (reference 01) is modified in favor of the claimant. The claimant is not eligible for partial unemployment insurance benefits for the period of July 17 through September 10, 2011. The matter is remanded to the Claims Section for investigation and determination of the issue as to whether the claimant has been generally able and available for work after his separation with the employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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