

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA RODRIGUEZ
Claimant

APPEAL NO. 08A-UI-10546-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC
Employer

OC: 09-21-08 R: 02
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 5, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 24, 2008. The claimant participated in the hearing. Clinton McElwee, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time clerk for Dollar General December 7, 2002. On September 9, 2008, she changed her availability from 7:30 a.m. to 4:30 p.m., Monday through Saturday, to 7:30 a.m. to 4:30 p.m., Saturday and Monday, so she could return to school. The employer was forced to hire another employee to replace the days and hours the claimant could no longer work, and consequently the Monday shift was not available because the new employee needed to work those hours in order to work 25 hours per week. The claimant was scheduled October 25, 2008, but was a no-call, no-show because she did not have childcare; worked November 1, 2008; called in November 8, 2008, unavailable because she did not have childcare; was a no-call, no-show November 15, 2008, because she went to the doctor; and was a no-call, no-show November 22, 2008, because she had to pick up her father. The claimant's previous hours are still available to her at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able and available to work the same hours as contemplated in the original contract of hire.

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".

871 IAC 24.23(5) and (16) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant was hired as a part-time clerk to work 28 to 32 hours per week. There has been no separation from her employment, but the claimant changed her availability so she could return to school and is now only available to work Saturdays and Mondays. She has not been showing up for her Saturday shifts and the new employee the employer hired to take the claimant's hours needed the Monday hours to get to 25 hours per week. The claimant has unduly limited her availability and consequently is not able to work the same hours as contemplated during her original contract of hire. Therefore, benefits must be denied.

DECISION:

The November 5, 2008, reference 02, decision is affirmed. The claimant changed her availability and is no longer available to work the same hours as contemplated in her original contract of hire. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw