

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE HATT
Claimant

APPEAL NO. 09A-UI-01597-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JERALD MANN
Employer

**Original Claim: 11-30-08
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 27, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 30, 2009. The claimant participated in the hearing. Kristi Wallerich, 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 crew member for McDonald's October 26, 2006. At the time of hire, the previous manager promised her she would receive 28 to 32 hours per week. In November 2007 a new manager was hired. The employer experiences a slowdown in business from November to mid-March due to the winter weather and "everyone's hours" are reduced. The claimant's hours were cut to 15 to 18 hours per week. The new manager told her that she was not working fast enough and could not cover enough areas of the store. The claimant has been receiving more hours during the last month.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at 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(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 part-time crew member. There has been no separation from her part-time employment and the claimant is currently working for this employer at hours reduced from those contemplated in the original contract of hire. Therefore, benefits are allowed.

DECISION:

The January 27, 2009, reference 01, decision is affirmed. The claimant is not employed at the same hours as in the original contract of hire and therefore is qualified for benefits based on her reduced part-time employment. Partial unemployment benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw