

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA RANSOM**  
Claimant

**APPEAL NO: 10A-UI-16702-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TASS ENTERPRISES INC  
MCDONALDS**  
Employer

**OC: 09/19/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Sara Ransom (claimant) appealed an unemployment insurance decision dated November 23, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she is still working at the same hours and wages with Tass Enterprises, Inc. (employer), doing business as McDonalds. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 19, 2011. The claimant participated in the hearing. The employer participated through Robin Lane, Store Manager and Georgia Way, Employer Representative. The availability issue was inadvertently left off the hearing notice so both parties waived their right to a formal notice of this issue so it could be addressed in the hearing today. 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 her original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time crew member on June 8, 2008 and continues to work in that same capacity. She was not guaranteed a minimum number of hours at the time of hire. The claimant used to be given more hours but the employer feels she is not reliable so has recently been given fewer hours.

**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 part-time crew member and continues in that same capacity with no change in her hours or wages. There has been no separation from her part-time employment and she is disqualified from receiving benefits.

**DECISION:**

The unemployment insurance decision dated November 23, 2010, reference 01, is affirmed. The claimant 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/pjs