

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M LACINA
Claimant

APPEAL NO. 14A-UI-01491-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHAELS STORES INC
Employer

OC: 01/05/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Nicole Lacina (claimant) appealed a representative's February 6, 2014, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she is still employed in her job for the same hours and wages as she was when she was hired by Michaels Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 3, 2014. The claimant participated personally. The employer participated by Rhonda Roberts, Store Manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

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 on November 13, 2012, as a part-time associate. The claimant is scheduled for the needs of the store. She was scheduled as few as nine hours in May 2013. Hours were higher during December 2013, but reduced in January 2014. The claimant filed for unemployment insurance benefits on January 5, 2014. She was scheduled for 33 hours in January 2014. The claimant was sick for 11 hours and had transportation issues and could not work for another 11 hours. In February 2014, she was scheduled for 50 hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 worker and is still working part-time for the employer. She is not available for work with another employer because she is working for this employer. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

DECISION:

The representative's February 6, 2014, decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work because she is working for the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs