

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA N FREEMAN**  
Claimant

**APPEAL NO. 10A-UI-05655-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE CLEANERS INC**  
**BURKE CLEANERS**  
Employer

**Original Claim: 03/07/10**  
**Claimant: Appellant (1)**

Iowa Code section 96.4(3) – Still Employed Same Hours and Wages

**STATEMENT OF THE CASE:**

Angela Freeman filed a timely appeal from the April 7, 2010, reference 02, decision that denied benefits based on an Agency conclusion that she was not partially unemployed from the above employment. After due notice was issued, a hearing was held on June 1, 2010. Ms. Freeman did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kay Johnson, Production Supervisor, represented the employer. The administrative law judge took official notice of the Agency's administrative record of documents submitted for or generated in connection with the April 6, 2010 fact-finding interview.

**ISSUES:**

Whether Ms. Freeman is partially unemployed from her job at Burke Cleaners.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Angela Freeman is employed by Burke Cleaners as a part-time shirt presser. Ms. Freeman started the employment in 2008 and continues in the same position. Ms. Freeman averaged 23.91 hours per week in 2008 and 25.82 hours per week in 2009. The employer has not reduced or changed the hours of employment it makes available to Ms. Freeman. The employer has not reduced Ms. Freeman's pay. Ms. Freeman has received raises during the employment. In 2010, Ms. Freeman has not been available for all of the work hours the employer was willing to make available for her. This was due to personal relationship problems Ms. Freeman was experiencing outside of work. Though Ms. Freeman has had other employment during the period she has been employed with Burke Cleaners, the job at Burke Cleaners has been Ms. Freeman's primary employment and is not supplemental in nature.

## REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence in the record indicates that Ms. Freeman still enjoys, at minimum, the same hours and wages at Burke Cleaners that existed at the time of her hire. The employer has not reduced the wages or available hours. The employment is Ms. Freeman's primary employment and is not supplemental in nature. Ms. Freeman is not partially unemployed from Burke Cleaners and is not eligible for unemployment insurance benefits. Benefits are denied effective March 7, 2010.

**DECISION:**

The Agency representative's April 7, 2010, reference 02, is affirmed. The claimant is not partially unemployed from her primary, part-time employment at Burke Cleaners and is not eligible for unemployment insurance benefits. Benefits are denied effective March 7, 2010.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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