

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HANNAH M BUNDY
Claimant

REGIS CORP
Employer

APPEAL 14A-UI-11473-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/28/14
Claimant: Appellant (1-R)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2014. Claimant participated. Employer did not participate.

ISSUES:

Is the claimant able to and available for work or is she still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has had two stints of employment with this employer. She voluntarily quit on July 14 to accept new employment with Cass & Co., LLC. She has since been discharged from Cass & Co. There has not been a fact-finding on her separation from Cass & Co., LLC.

She began working part-time for Regis again in September 2014 where she remains employed. She remains employed at the same hours and wages as at the time of her most recent hire. She has other wages in her base period.

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 § 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".

Iowa Admin. Code r. 871-24.23(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 is still employed at the same hours and wages as at the time of her hire in September 2014. Accordingly, benefits are denied.

REMAND:

The claimant has not had an initial fact-finding and determination on her separation from her last employer, Cass & Co., LLC. This issue is remanded to the unemployment insurance claims center for a fact-finding and initial determination.

DECISION:

The October 31, 2014, reference 01, decision is affirmed. The claimant is not able to work and available for work effective September 28, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs