

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY HOLMAN
Claimant

APPEAL NO: 20A-UI-00039-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 12/09/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 23, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 23, 2020. The claimant participated in the hearing. The employer stated it was not contesting the claimant's claim and chose not to participate in the hearing.

ISSUE:

The issue is whether the claimant is temporarily unemployed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time security guard for Express Services last assigned at Yard Waste from October 16, 2016 through December 8, 2019. The claimant is laid off from Yard Waste every December and recalled to work every April. She maintains contact with Express Services and checks in for work on a weekly basis.

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 and wages as contemplated in the original contract of hire as she has been laid off.

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".

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 was hired as a full-time security guard. The claimant was laid off from her assignment and has maintained weekly contact with the employer. She will return to work April 1, 2020.

Under these circumstances, the administrative law judge finds benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 23, 2019, reference 01, decision is reversed. The claimant is temporarily unemployed due to being laid off from her assignment. The claimant is not employed at the same hours and wages as in her original contract of hire. The claimant is eligible for benefits based on her separation from this full-time employment, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn