

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY L HOAG
Claimant

HR247 LLC
Employer

APPEAL NO: 18A-UI-07309-JE-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/27/18
Claimant: Respondent (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 27, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 25, 2018. The claimant participated in the hearing. Pat Einarsen, Owner/Manager; Carol Engelken, General Manager; Nancy Bakey, Supervisor; and Tammy Hermsen, Payroll and Attendance Administrator; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a part-time seasonal machine operator for HR247, LLC. As a part-time seasonal employee she has a flexible work schedule, is not subject to the employer's attendance point system, and is off work in June, July and part of August each year. The claimant was hired as a full-time employee and began working September 7, 2016, but requested part-time seasonal status September 19, 2016, when it became apparent she would not be able to comply with the employer's attendance policy for full-time employees (Employer's Exhibits One and Two). Consequently, she chose to be a part-time seasonal employee. She signed a "Request to Work Part-Time/Seasonal Hours" document April 27, 2018, formalizing her part-time seasonal status (Employer's Exhibit Four). The claimant chose to be a part-time seasonal employee because she does not have anyone to help with her young children in the summer and needs to be able to leave work if one of her children is ill or the school or daycare calls. In order to be able to work the flexible schedule the claimant must be a part-time employee and is off in the summer. The claimant's last day worked was May 24, 2018.

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 and is not eligible for partial unemployment insurance benefits.

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 chose to work as a part-time seasonal employee. Her work schedule is flexible and she is not subject to the employer's attendance point system. As a part-time seasonal employee she does not work June, July and part of August. The claimant opted to work as a part-time seasonal employee due to childcare issues. The claimant is working the same hours and wages as in the agreement she signed in September 2016 and again in April 2018 which provided for part-time hours with summers off. She is not working a reduced workweek different than the agreement she most recently signed April 27, 2018. Because the claimant is working the same hours as in the availability agreement and is not working a reduced workweek different than her contract of hire, she is not considered able and available for work or eligible for partial unemployment insurance benefits. Accordingly, benefits must be denied.

DECISION:

The June 27, 2018, reference 01, decision is reversed. The claimant is not able to work and available for work effective May 27, 2018. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn