

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JODY A JOHNSON**

Claimant

**APPEAL NO: 19A-UI-04459-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 04/21/19**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 10, 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 June 26, 2019. The claimant participated in the hearing. Shelly Sosa, First Assistant Manager and Patti Davis, Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on May 10, 2019. The claimant received the decision May 13, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 20, 2019. The appeal was not filed until May 31, 2019, which is after the date noticed on the disqualification decision. The claimant went to the local office in Marshalltown May 20, 2019, and a representative assisted her in filing her appeal. She called the Appeals Bureau May 31, 2019, and was told it was not received so she filed a second appeal May 31, 2019. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired by Casey's as a part-time cashier and continues to be employed with Casey's. She became a full-time employee April 16, 2017 and worked in that capacity until February 28, 2019, when she started another full-time job with a previous employer and became a part-time employee of Casey's. She voluntarily quit her full-time job April 16, 2019, and asked Casey's for additional hours. It has given her hours when available. There has been no change in her hours since she became a part-time employee.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire.

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 was hired as a part-time cashier, worked full-time for nearly two years, before requesting to become a part-time employee again February 28, 2019. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire which is as a part-time employee since February 28, 2019. Consequently, the claimant is disqualified from receiving benefits.

## **DECISION:**

The May 10, 2019, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her contract of hire and therefore is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn