

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATALLIE N GARRIOTT**  
Claimant

**APPEAL NO: 17A-UI-06187-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUBBA-Q'S LLC**  
Employer

**OC: 05/07/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.4 38 – Available for Work  
Iowa Admin. Code 871.24.23(26) – Part-time same hours, wages

**STATEMENT OF THE CASE:**

The claimant, filed a timely appeal from a representative's decision dated June 13, 2017, reference 03, was denied unemployment insurance benefits finding that the claimant was not willing to work the number of hours in her occupation therefore reasonably limiting her availability for work. After due notice was provided, a telephone hearing was held on June 30, 2017. Claimant participated. The employer participated by Ms. Sabrina Knapp, Owner.

**ISSUE:**

Whether the claimant is able and available for work.

Whether the employer's account is subject to charge.

Whether the claimant continues to be employed at the same hours and wages as contemplated in the original agreement of hire.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Natallie Garriott began employment with Bubba-Q's LLC on May 31, 2016 and continues to be employed at the time of hearing. Ms. Garriott was hired to work part-time server, working one shift per week and was paid \$4.40 per hour plus tips. The client continues to be employed by Bubba-Q's, LLC and continues to work one shift per week and continues to be paid the same rate per hour.

During the time that Ms. Garriott accepted employment with Bubba-Q's, LLC, she was employed full-time by MC Sports and continued in that employment until that employer ceased doing business and the claimant was laid off of work.

The claimant is actively and earnestly seeking new employment by contacting respective employers each week that she claims benefits. The claimant has not refused any full-time offers of work since opening her claim for benefits effective date of May 17, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

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 worker and is still working part-time for this employer. She is still employed in a part-time position as was agreed upon at the time of hire. She understood that at hire that she was only guaranteed one shift per week, that has not changed. During the time that Ms. Garriott began working part-time for this employer she employed full-time for MC Sports. That business has closed and the claimant was laid under non-disqualifying conditions.

The evidence in the record establishes that claimant was actively and earnestly seeking full-time employment and that she is not limited her availability for full-time work by either her part-time employment with Bubba-Q's, LLC or by placing undue limitations on the times she can work, the type of work she is looking for, or the pay that she is willing to accept.

For these reasons, the administrative law judge concludes that the claimant is able and available for work within the meaning of the Iowa Employment Security Law

Bubba-Q's LLC is not subject to charging for benefits paid to Ms. Garriott, the claimant is eligible for benefits, provided the claimant has sufficient benefits available to her from her previous full-time employment with MC Sports.

**DECISION:**

The representative's decision dated June 13, 2017, Ref 03 is reversed. Claimant is able and available for work. The account of Bubba-Q's LLC is not subject to charge for benefits paid to the claimant. The claimant continues to be employed part-time working at the same hours and wages as agreed upon at the time of hire. The claimant is eligible for benefits providing she has sufficient wages in her account from her former full-time employer and is otherwise eligible. The account of Bubba-Q's LLC is not subject to charge at this time.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn