

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA ANDERSON
Claimant

APPEAL NO: 11A-UI-08127-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN LEGION #363
Employer

OC: 04/17/11
Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Christina Anderson (claimant) appealed an unemployment insurance decision dated June 17, 2011, reference 02, which held that she was not eligible for unemployment insurance benefits because she is working the same hours and wages with the American Legion (employer). Due notice was issued scheduling the matter for a telephone hearing to be held on August 3, 2011. Because a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is eligible for benefits based on her employment with this employer.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant was hired part-time with this employer and continues to be employed in that same capacity. She was allowed benefits based on her separation from the Jasper County Elderly Nutrition and is filing benefits based on that separation.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for 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

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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".

871 IAC 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 part-time for the employer herein and continues to be employed part-time with no change in her hours or wages. She is disqualified from receiving benefits from this employer. However, the claimant did qualify for unemployment benefits based on her separation from Jasper County.

DECISION:

The unemployment insurance decision dated June 17, 2011, reference 02, is modified in favor of the appellant. Benefits are denied from this employer and its account is not subject to charge. The claimant continues to be qualified for benefits based on her separation from Jasper County, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs