

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEEDRESE JENKINS

Claimant

APPEAL NO: 13A-UI-04864-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALDI INC

Employer

OC: 03/17/13

Claimant: Appellant (1)

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 April 17, 2013, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 30, 2013. The claimant participated in the hearing. Clarissa Prior, District Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A 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: The claimant was hired as a part-time cashier for Aldi from December 10, 2012, and continues to be employed in that capacity with no change in her hours or wages.

The employer considers employees working 20 hours per week to be full-time employees. The claimant was scheduled 37 hours the week of December 24, 2012; 44 hours the week of December 31, 2012; 29 hours the week of January 7, 2013; 24 hours the week of January 14, 2013; 23 hours the week of January 28, 2013; 26 hours the week of February 11, 2013; 20 hours the week of February 18, 2013; 21 hours the week of February 25, 2013; 22 hours the week of March 4, 2013; 21 hours the week of March 11, 2013; 22 hours the week of March 18, 2013; 22 hours the week of March 25, 2013; 33 hours the week of April 1, 2013; 19 hours the week of April 8, 2013; 17 hours the week of April 15, 2013; and 19 hours the week of April 22, 2013 (Claimant's Exhibit A). The employer does not guarantee employees a certain number of hours.

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 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".

The claimant was hired as a full-time cashier but the employer considers 20 hours per week as full-time employment. There has been no separation from her employment with Aldi and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. Consequently, the claimant is disqualified from receiving benefits based on her employment with Aldi.

DECISION:

The April 17, 2013, reference 05, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on employment with Aldi. The employer's account is not subject to charge based on this employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css