

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORINE THOMPSON
Claimant

APPEAL NO: 11A-UI-06389-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GIL'S FOOD CLEAR LAKE INC
DENNY'S 7040**
Employer

**OC: 04-17-11
Claimant: Appellant (1/R)**

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 May 11, 2011, 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 10, 2011. The claimant participated in the hearing. Chris Christianson, General Manager, participated in the hearing on behalf of the employer.

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 service assistant for Denny's 7040 August 10, 2010 with no guarantee of hours. She continues to be employed in that same capacity, with no change in her hours or wages.

The claimant works full-time at the Super 8 Motel and was on a short-term leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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".

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 as a part-time service assistant. There has been no separation from her part-time employment and she is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her part-time employment.

However, the claimant was on a short-term separation from her full-time employer and this case is remanded for a determination on whether the claimant is eligible for benefits from that separation.

DECISION:

The May 11, 2011, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire. She is therefore not qualified for benefits based on her part-time employment. The case is remanded for an investigation and determination of whether the claimant is eligible for benefits based on her separation from her full-time employment. 871 IAC 26.14(5).

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs