

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA A PEACOCK
Claimant

APPEAL NO. 11A-UI-08441-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available/Working Same Hours and Wages

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 15, 2011, reference 01, which denied benefits as of May 15, 2011 finding that the claimant was still employed at the hours and wages agreed and therefore could not be considered partially unemployed. After due notice, a telephone hearing was held on July 19, 2011. Claimant participated personally. Participating as a witness for the claimant was her mother, Norma Peacock. The employer participated by Ms. Alyce Smolsky, Hearing Representative, and witness, Tina Donatsch, Operations Manager. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Gina Peacock began employment with FBG Service Corporation on July 3, 2000 and continues to be employed at the time of hearing. Ms. Peacock was initially employed on a full-time basis working as a cleaning specialist and was paid by the hour. Her immediate supervisor is Tina Donatsch.

In June 2009 the claimant accepted a change from full-time employment to part-time employment offering four hours of work per day three days per week. Ms. Peacock hoped that in the future her hours would increase. The claimant was not guaranteed however that her working hours would increase from the agreed upon part-time hours.

At the time of hearing, Ms. Peacock continues to be employed part time working four hours per day, three days per week.

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".

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 initially full time in July 2000. The evidence in the record, however, establishes that Ms. Peacock accepted a change from full time to part-time hours in June 2009. At that time the claimant was offered four hours per day, three days per week of employment and accepted the change. While the claimant may have had good cause to quit her employment at that time she did not do so. At the time of hearing the claimant remains employed part time working the same hours and wages as agreed upon in June 2009. The claimant is still employed in a part-time position as agreed. The claimant understood that after June 2009 she was not guaranteed any more hours per week than four hours per day, three days per week. That has not changed. The claimant is disqualified from receiving partial unemployment insurance benefits because she remains employed part time at the same hours and wages agreed upon in June 2009.

DECISION:

The representative's decision dated June 15, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work within the meaning of the Employment Security Law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs