

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN SOLOMON

Claimant

APPEAL NO: 11A-UI-02556-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 12/19/10

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Kathleen Solomon (claimant) appealed an unemployment insurance decision dated February 21, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits based on her separation from Advance Services, Inc. (employer). She was determined to be monetarily eligible based on wages earned with other employers. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2011. The claimant participated in the hearing. The employer provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. Based on the evidence, the arguments of the party, 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 working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant separated from her full-time employer and is filing for benefits based on that separation. She was hired as an on-call employee on July 7, 2009. She was assigned to Boehringer and Ingelhelm and continues to be employed in that same capacity with no change in her hours or wages.

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 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 an on-call employee. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. The claimant is disqualified from receiving benefits from this employer. However, the claimant is separated from her full-time employer and has qualified for benefits based on that separation.

DECISION:

The unemployment insurance decision dated February 21, 2011, reference 01, is modified with no effect. There has been no separation from the employer herein and the employer's account is not subject to charge. The claimant does qualify for unemployment insurance benefits based on her separation from her full-time employer, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs