

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KERI R DUNBAR
Claimant

FIELDSTONE RESTAURANTS CORP
Employer

APPEAL 15A-UI-03405-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/01/15
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 9, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. Claimant participated. Employer participated through Ryan Thompson, Operator/ District Manager.

ISSUE:

Was the claimant able to and available for work through March 13, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cashier/team member beginning on March 16, 2014 through March 21, 2015 when she was separated.

The claimant was hired to work part time. There is no evidence to support her contention that she was promised any particular number of shift or hours per week. The employer does not guarantee any part-time employee any number of hours per week. The claimant's wage records indicate that she never came close to working 30 hours per week.

The claimant last worked in January 2015 and was given her last paycheck on February 9 which the employer's bank records show she cashed on February 11, 2015. The claimant was an unreliable employee when it came to attendance. She had several incidents of no-call/no-show. The claimant told the employer that she was going to visit her grandchildren in early February. She did not provide her current correct telephone number to the employer when her cellular telephone number changed.

The employer had a regular employee who worked the "lobby" job Monday through Friday. The claimant was allowed to come into work on Saturday and Sunday and work in the lobby-dining room if she so chose. The claimant stopped showing up to work weekends and the employer

could not get ahold of her. The claimant called on March 13 and said she had found another job. By that time she had not worked for a month and one-half.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(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 asked for time off in early February. She was by that time working sporadically if at all. The claimant worked weekends when she wanted to go in and work in the dining room or lobby. The claimant was never guaranteed any specific set hours and she certainly never came close to working anywhere near full time. Under these circumstances that administrative law judge concludes she is not able to and available for work effective February 1, 2015. Accordingly, benefits are denied.

DECISION:

The March 9, 2015, reference 01, decision is affirmed. The claimant is not able to work and available for work effective February 1, 2015. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css