

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEQUILA N SMITH
Claimant

APPEAL NO. 12A-UI-06574-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 04/08/12
Claimant: Respondent (4)

Section 96.4(3) – Able and Available
Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Parco, filed an appeal from a decision dated May 30, 2012, reference 02. The decision allowed benefits to the claimant, Tequila Smith. After due notice was issued, a hearing was held by telephone conference call on June 27, 2012. The claimant participated on her own behalf. The employer participated by General Manager Bill Lyman.

The parties waived their right to notice on the issue of the claimant's separation from this employment.

ISSUE:

The issue is whether the claimant was able and available for work and whether she quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Tequila Smith was employed by Parco from October 19, 2011 until May 27, 2012 as a part-time crew member. She was not guaranteed any minimum number of hours per day, week, or pay period. She got a second job from January until April 2012, but was then laid off. Ms. Smith filed a claim for unemployment benefits with an effective date of April 8, 2012. She was available to work eight hours per day any day of the week, but hours were not available because someone had been hired to replace her while she was working her other job. The general manager said there might be more hours available if she learned other skills and could be more versatile.

On May 16, 2012, Ms. Smith asked Tracy, the assistant manager, if she could change the schedule to work only daytime hours. She had accepted another job that was to begin on May 20, 2012, for an evening sales associate. Tracy consulted with another manager and notified the claimant her hours would not be changed, at which time she quit.

REASONING AND CONCLUSIONS OF LAW:

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 able and available for work any shifts and any days between April 8 and May 16, 2012, as she had no other job to work around. She is therefore eligible for benefits during that time.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant is disqualified from receiving benefits because she quit to take another job, and no other employment has been established after her resignation.

DECISION:

The representative's decision of May 30, 2012, reference 02, is modified in favor of the appellant. Tequila Smith is eligible for benefits from April 8 through May 16, 2012, as she was able and available for work during that time.

Ms. Smith is disqualified effective May 16, 2012, because she quit without good cause attributable to the employer. She is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw