

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RHONDA L SMITH
Claimant

MATRIX HOSPITALITY NO 2 LLC
Employer

APPEAL 16A-UI-11990-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 22, 2016. The claimant participated personally. The employer did not register a phone number with the Appeals Bureau to participate. Claimant exhibit A was received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able and available for work? Is the claimant still performing work under the same hours and wages for which she was hired?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment June 2015 for this employer, working part-time as a housekeeper at a rate of pay of \$8.50 per hour and is currently employed under the same hours and agreement for which she was hired.

The claimant opened her unemployment insurance claim with an effective date of October 9, 2016. Prior to opening her claim, the claimant was unemployed from a period of September 26 until October 10, 2016, when the employer was closed due to electrical issues. Since October 10, 2016, the claimant has resumed her usual hours and schedule without any break in employment. The claimant is working all available hours to her without restriction.

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 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".

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 administrative law judge recognizes the claimant may have been temporarily unemployed prior to establishing her claim for unemployment benefits, based on a two week lay-off with this employer. However, in this case, since the claimant established a claim for unemployment insurance benefits, effective October 9, 2016, she has been working under the same part-time hours and wages for which she was hired. Accordingly, benefits are denied effective October 9,

DECISION:

The October 27, 2016, reference 01, decision is affirmed. The claimant is not able to work and available under Iowa law for work effective October 9, 2016 because she is working the same hours and wages for which she was hired by this employer. Benefits are denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs