

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAYLEY WOMBACHER**  
Claimant

**APPEAL NO: 15A-UI-13285-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WENDLING QUARIES INC**  
Employer

**OC: 11/01/15**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 25, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 21, 2015. The claimant participated in the hearing. The employer declined to participate in the hearing and stated it is not contesting the claimant receiving benefits.

**ISSUE:**

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a seasonal full-time scale house operator for Wendling Quarries April 11, 2011, and continues to be employed in that capacity. Her position runs through the spring, summer and part of the fall and then she is laid off for the winter. This year the layoff occurred September 22, 2015, due to a lack of work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages as contemplated in the original contract of hire but is on a seasonal layoff.

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(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 as a seasonal, full-time scale house operator. There has been no separation from her part-time employment but the claimant was laid off for the winter September 22, 2015. Consequently, she is not currently working for this employer at the same hours and wages as contemplated in the original contract of hire. Because the claimant is on a seasonal layoff, she is eligible to receive benefits, provided she is otherwise eligible.

**DECISION:**

The November 25, 2015, reference 01, decision is reversed. The claimant is not employed at the same hours and wages as in her original contract of hire and therefore is qualified for benefits based on her seasonal, full-time employment, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs