

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA ALVAREZ**  
Claimant

**APPEAL NO: 12A-UI-14696-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VLAZNIM ARIFI**  
**KING TOWER RESTAURANT**  
Employer

**OC: 11/04/12**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Laura Alvarez (claimant) appealed an unemployment insurance decision dated December 6, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she is working the same hours and wages with King Tower Restaurant (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2013. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Claimant's Exhibit A was admitted into evidence. 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 was hired as a full-time waitress on May 6, 2012 and she averaged 137 hours each month until November 2012 when her hours were reduced to an average of 46 hours per month. She continues to be available for more hours.

**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".

871 IAC 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.

Contract for hire merely means the established conditions of the employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). The claimant testified she was hired on a full-time basis with a guarantee of 40 hours per week. While the evidence does not establish that she regularly worked 40 hours per week, it does establish that her hours were severely cut in November 2012. The claimant is not working at the same hours and wages as in her original contract of hire. Benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated December 6, 2012, reference 01, is reversed. The claimant meets the availability requirements of the law and qualifies for benefits, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css