

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE MURPHY

Claimant

APPEAL NO: 12A-UI-13598-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERIHOST AT BOONE INC

BAYMONT INN & SUITES

Employer

OC: 10/21/12

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Julie Murphy (claimant) appealed an unemployment insurance decision dated November 13, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she is limiting her availability for work with Baymont Inn & Suites (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2012. The claimant participated in the hearing with her friend Sandra Martin in attendance. The employer participated through Jae Lee, General Manager. Based on the evidence, the arguments of the parties, 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 part-time housekeeper on November 13, 2011 with no guarantee of hours and she continues to work in that same capacity. Her part-time hours have been reduced due to her inability to get along with a co-worker. The claimant and co-worker Chandra Hansen had a heated physical and verbal altercation at the beginning of September 2012 in which both employees acted inappropriately. The general manager cannot schedule these two employees at the same time due to their inability to work together. He is willing to schedule them together when they can assure him there will be no more problems. The claimant contends she is willing to work with Ms. Hansen but Ms. Hansen is not willing to work with her.

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 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".

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.

The claimant was hired as a part-time housekeeper with no guarantee of hours and she continues to work in this same capacity. She is not working as many hours as she used to work due to her inability to get along with a co-worker. The fact that she claims she is willing to work with her co-worker is insufficient to establish that there will be no problems if they are scheduled together. The claimant and her co-worker created the problem and they both have to resolve it. She is disqualified from receiving unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated November 13, 2012, reference 01, is affirmed. The claimant continues to be employed part-time and partial unemployment insurance benefits are denied as of October 21, 2012.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs