

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON DE LA CRUZ
Claimant

APPEAL NO: 14A-UI-06563-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/01/14
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(23) – Removed from the Labor Pool

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 17, 2014, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 17, 2014. The claimant participated in the hearing.

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 separated from her previous full-time employer, OT Communication Solutions, on May 13, 2014, and started her new employment at Cunningham Inc. May 14, 2014. While working for OT Communications the claimant's hours were reduced beginning the week ending April 26, 2014, when she worked 30 hours. She worked 20 hours the weeks ending May 3 and May 10, 2014, and eight hours her last partial week before leaving for other employment the week ending May 17, 2014.

When she started her new job with Cunningham Inc., she explained her situation to the human resources manager who told her she probably would have been eligible for partial unemployment benefits during that time. Consequently, the claimant filed a claim for benefits effective June 1, 2014, and requested her claim be backdated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able and available at this time because she is working full time.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

The claimant was hired as a full-time receptionist at Cunningham Inc. May 14, 2014, and continues to be employed in that capacity at the present time. She is working too many hours to be considered partially unemployed at this time. The issue of whether her claim can be backdated will be addressed in the companion decision, Appeal Number 14A-UI-06562.ET.

DECISION:

The June 17, 2014, reference 03, decision is affirmed. The claimant is not able and available for work at this time because she is working so many hours she has effectively been removed from the labor market.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css