

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EVANGELINA GARIBAY**  
Claimant

**APPEAL NO: 09A-UI-08283-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GLENWOOD GOLF CORP**  
Employer

**OC: 04-05-09**  
**Claimant: Appellant (1R)**

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 June 5, 2009, 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 June 24, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 a part-time seasonal worker for Glenwood Golf from April 3, 2009 to June 1, 2009. She worked full-time last season but because her separation from this employer during the off-season was longer than four weeks she was not considered temporarily unemployed. When she returned to work this season she was notified that all employees were going to be part-time workers. The claimant worked part-time from April 3, 2009 to June 1, 2009, at which time she was separated from this employer. The separation issue has yet to be adjudicated by the Claims Section.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages as contemplated in the original contract of hire this season prior to her separation from this employer.

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 bartender/cashier this season. Because she was off work more than four weeks during the winter months she is not considered temporarily unemployed during that time and therefore the beginning of the new season brought a new contract of hire which made all employees part-time. While there was a change in her hours from last season the employer is not bound to retain her as a full-time employee each season she returns. Consequently, the administrative law judge must conclude there has been no change in the claimant's contract of hire during this season.

The claimant has separated from this employer since her original claim for benefits was made. That issue is remanded to the Claims Section for an initial determination and decision.

**DECISION:**

The June 5, 2009, reference 01, decision is affirmed. The claimant was still employed at the same hours and wages as in her original contract of hire for this season prior to her separation and therefore is not qualified for benefits with regard to the same hours and wages issue. The

issue of the claimant's separation from this employer, however, is remanded to the Claims Section for an initial determination and decision.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css