

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUIANA M. CONARD
Claimant

APPEAL NO: 17R-UI-08137-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 05/28/17
Claimant: Appellant (1-R)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 19, 2017, 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 August 29, 2017. The claimant participated in the hearing. Jessica Walsh, Director of Human Resources, participated in the hearing on behalf of the employer.

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 employed as a full-time crew chief for Parco Ltd. (Wendys) from April 18, 2016 to June 15, 2017. The claimant called in and stated she would not be at work May 22 and May 24, and May 27 through May 31, 2017, because she was dissatisfied with the schedule. She requested June 1, 2 and 4, 2017, off for personal reasons and the employer granted her request. She returned to work June 5, 2017, and worked June 7 through June 10, 2017; she was scheduled but called in for personal reasons June 12, 2017; and worked June 13, 2017. She was scheduled to work June 14 and 15, 2017, but called and stated she would not be in and the employer determined she voluntarily quit her job.

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 through her separation date.

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 scheduled to work full-time hours between May 22 and June 13, 2017, but chose not to work most of those hours because she was dissatisfied with the work schedule and because of personal reasons including her children's birthdays. The employer did not reduce the claimant's hours and had full-time hours available had the claimant chosen to work those hours. The claimant was working for this employer at the same hours and wages as contemplated in the original contract of hire through June 13, 2017, the last day she worked before separating from this employer. The claimant is not eligible for partial unemployment insurance benefits as she initiated and was responsible for the reduction in her hours.

The issue of the claimant's separation from this employer has not been heard and adjudicated by the Claims Bureau of Iowa Workforce Development. That matter is therefore remanded to the Claims Bureau for an initial determination and adjudication.

DECISION:

The June 19, 2017, reference 01, decision is affirmed. The claimant was still employed at the same hours and wages as in her original contract of hire through her separation date and therefore is not qualified to receive benefits. The issue of the claimant's separation from this employer is remanded to the Claims Bureau for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn