

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M RINGER
Claimant

APPEAL NO. 14A-UI-00622-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TLH CLEANING LLC
Employer

OC: 12/30/12
Claimant: Respondent (2R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 10, 2014, reference 04, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 10, 2014. The claimant participated personally. The employer participated by Ted Hammes, president. The record consists of the testimony of Angela Ringer; the testimony of Ted Hammes; and Employer's Exhibits 1-4. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a cleaning company that has a contract with the Iowa Department of Transportation. The claimant was a part-time employee. There was no guarantee on the number of hours that the claimant would receive. The claimant had worked for the previous contractor beginning in May 2011 until July 1, 2013, which is when this employer took over the contract. It was normal for hours to increase in the summer and decrease in the winter. The claimant has worked the same percentage of hours for this employer as she had for the previous contractor. The claimant also called off 13 days that she was scheduled for work in December 2013.

The claimant has since quit her job on January 31, 2014. That issue was not included on the notice of appeal hearing and has not been considered by the claims section.

REASONING AND CONCLUSIONS OF LAW:

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 is not eligible for unemployment insurance benefits. The evidence established that she is working the same hours and wages as contemplated in the original contract of hire. In addition, the wage records do not show that there has been a change in the pattern of employment during the base period. Finally, any decrease in the number of hours has been due to the claimant calling off work. Under these circumstances, the claimant is not eligible for unemployment insurance benefits. Benefits are denied.

The claimant testified during the hearing that she has quit her job. The day she quit her job was January 31, 2014. This case is remanded to the claims section to consider the separation issue.

DECISION:

The decision of the representative dated January 10, 2014, reference 04, is reversed. The claimant is not eligible for unemployment insurance benefits beginning December 8, 2013. This matter is remanded to the claims section for consideration of the separation issue.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs