

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNELISE CHASE
Claimant

APPEAL NO: 12A-UI-12083-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES
Employer

OC: 09/02/12
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Annelise Chase (claimant) appealed an unemployment insurance decision dated October 1, 2012, reference 03, which held that she was not eligible for unemployment insurance benefits because she was still employed at the same hours and wages with Express Services (employer). Due notice was issued scheduling the matter for a telephone hearing to be held November 5, 2012. Because a decision fully favorable to the parties could be made based on the administrative record, a hearing was deemed unnecessary. Based on the evidence 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 reviewed and considered all of the evidence in the record, finds that: The claimant began working for the employer on a part-time basis in August 2012 and continues to be employed in that same capacity. The claimant separated from her full-time employment with Busch Satellite on September 6, 2011 and was qualified for benefits based on that separation.

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 § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

<http://www.iowaworkforce.org/ui/appeals/index.html>

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.

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

The claimant was hired part time and is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. There has been no separation from her part-time employment and she is disqualified from receiving benefits from this employer. However, the claimant is qualified for benefits based on her separation from her full-time employer, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated October 1, 2012, reference 03, is modified in favor of the appellant. The claimant is not eligible for benefits based on her part-time employment and the employer's account is not subject to charge. She continues to be qualified for benefits based on the separation from her full-time employer, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css

<http://www.iowaworkforce.org/ui/appeals/index.html>