

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA SIRES

Claimant

APPEAL NO: 14A-UI-05178-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EYEMART EXPRESS LTD/VISION 4 LESS

Employer

OC: 03/02/14

Claimant: Appellant (2)

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 May 14, 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 June 9, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

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 hired as a part-time optician for Vision 4 Less on May 6, 2013, and continues to be employed in that capacity. At the time of hire the claimant was told she would receive between 25 and 33 hours per week and she did until October 2013 when her hours were decreased significantly after her direct manager was told she had to work more hours and those hours were then taken from the claimant.

On May 1, 2014, the employer's optometrist's contract expired and he left the business which drastically reduced the employer's business. The claimant's hours then dropped to about six hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at 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:

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 hired as a part-time optician for Vision 4 Less. There has been no separation from her part-time employment but the claimant is not currently working for this employer at the same hours and wages as contemplated in the original contract of hire. While this is a part-time job, the claimant was told at the time of hire she could expect to receive between 25 and 33 hours per week, and she did for several months, establishing a pattern of employment. She was working that number of hours until October 2013 when her supervisor was forced to work more hours and consequently the hours were taken from the claimant and given to the supervisor. The final blow to the claimant's hours occurred when the employer's optometrist left the store May 1, 2014, and the claimant's hours were cut to six per week. All of these changes were initiated and effected by the employer and none were due to any change in the claimant's availability.

Under these circumstances, the administrative law judge concludes the claimant is not working the same hours as contemplated in her original contract of hire. Therefore, she is partially unemployed.

DECISION:

The May 14, 2014, reference 03, decision is reversed. The claimant is not employed at the same hours and wages as in her original contract of hire and therefore is eligible for partial unemployment insurance benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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