

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L CAMPBELL
Claimant

APPEAL NO. 12A-UI-04954-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 03/18/12
Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed a timely appeal from a representative's decision dated April 19, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 22, 2012. Claimant participated personally. The employer participated by Ms. Stephanie VanDellen, Hearing Representative, and Ronald Bernard, Manager.

ISSUE:

The issue in this matter is whether the claimant is still employed part-time at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jennifer Campbell began employment with Kinseth Hotel Corporation on June 1, 2011 when the employer purchased the facility where Ms. Campbell had previously been employed. The claimant continues to be employed at the time of hearing. Ms. Campbell was hired to work as a part-time laundry worker and was paid by the hour. Claimant was hired with no guarantee of minimum hours of work each week. The claimant was hired to be paid at the rate of \$7.60 per hour. The claimant now receives \$7.75 per hour.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Campbell is still employed in a part-time job at the same hours and wages as contemplated in the original agreement of hire. It does.

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 evidence in the record establishes that Ms. Campbell was hired in a part-time capacity with no guarantee as to the minimum number of hours she would be assigned each week. The claimant was also hired to be paid by the hour and continues to be paid at the same or greater weight per hour than she was hired for. As a part-time employee the claimant's hours have fluctuated due to business needs. The claimant continues to be employed at the time of hearing in a part-time capacity with no guarantee of minimum hours and is paid at a higher rate of pay per hour than agreed upon at the time of hire.

For the above-stated reasons, the administrative law judge concludes the claimant cannot be considered to be partially unemployed as she is still employed part-time at the same hours and wages as contemplated in the original agreement of hire. As there was no guarantee of the minimum number of hours the claimant would be assigned each week, there has been no change in the agreement of hire. The claimant's reduced work weeks were, therefore, no different than agreed upon by the parties. Benefits are denied as of March 18, 2012.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 19, 2012, reference 01, is reversed. The claimant is not eligible for partial unemployment insurance benefits and cannot be considered to be partially unemployed as of March 18, 2012 as the claimant continues to be employed part-time at the same hours and wages as contemplated in the original agreement of hire. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs