

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIE FENS

Claimant

APPEAL NO: 15A-UI-07143-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR CROSS AGENCY

Employer

OC: 05/17/15

Claimant: Appellant (1)

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 June 18, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 28, 2015. The claimant participated in the hearing. Donald Schiffer, Partner/Insurance Agent, 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 hired as a part-time sales assistant for Cedar Cross Agency February 24, 2014. She also worked part-time for the University of Dubuque throughout the 2015-2016 academic year and part-time for Maurice's until June 30, 2015. Additionally, she owns a part-time painting business. She has not separated from any full-time employers during her base period of employment.

The claimant was hired to work Monday, Wednesday and Friday with hours varying depending on her other job schedules. Last semester she finished teaching later in the morning and would arrive at the employer to work between 12:30 and 1:00 a.m. and work until 5:00 p.m., except on Fridays when her shift ended at 4:00 p.m.

The employer scheduled the claimant every other day because he did not have enough work for her to do on consecutive days. In May 2015 Maurice's scheduled the claimant during day hours rather than the nights and weekends she requested and consequently she did not work the same number of hours for the employer as she usually did. If not for the claimant's changes she initiated in her hours, she would work Monday, Wednesday, and Friday from 10:30 or 11:00 a.m. to 4:30 p.m. Once in a while business was slow but the employer never sent the claimant home.

In May 2015, the claimant, the employer and the full-time sales assistant met to discuss the claimant's availability. The claimant thought she would be more available since she was done teaching for the semester but did not know yet that Maurice's was going to schedule her days. The claimant was willing to trade shifts but because the employer did not have enough work for her to work consecutive days it would not let her change in scheduled days but did allow her to change her scheduled hours based on the schedules of her other jobs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still 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".

The claimant was hired as a part-time sales assistant. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire as she was never guaranteed a certain number of hours. The changes in the claimant's hours were all instigated by the claimant and had she not changed her hours she could have worked the same hours as the parties agreed to at the time of her hire. Consequently, the administrative law judge must conclude the claimant is not eligible for benefits.

DECISION:

The June 18, 2015, reference 02, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on her part-time employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/mak