

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAYA O CHISHOLM**  
Claimant

**APPEAL NO. 14A-UI-06820-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DALL-HAUS INC**  
Employer

**OC: 06/01/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

Taya Chisholm filed a timely appeal from the June 26, 2014, reference 01, decision that denied benefits effective June 1, 2014, based on an agency conclusion that Ms. Chisholm did not meet the availability requirement to be eligible for benefits. After due notice was issued, a hearing was held on July 23, 2014. Ms. Chisholm participated. Kendra Gehman, General Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant.

**ISSUE:**

Whether Ms. Chisholm has met the work ability and availability requirements since she established her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Taya Chisholm commenced her employment with Dall-Haus, Inc., doing business as Culvers, in July 2013 and continues in that employment. From the start of the employment through May 31, 2014, Ms. Chisholm's employment was full time. On May 29, 2014, Ms. Chisholm saw her doctor at University of Iowa Hospitals and Clinics. Ms. Chisholm's doctor recommended that she work only part time due to serious illness, cancer. Ms. Chisholm's doctor provided Ms. Chisholm with a doctor's note that released Ms. Chisholm to work *part-time*. Ms. Chisholm presented the note to Kendra Gehman, General Manager, at Dall-Haus, Inc. The employer reduced Ms. Chisholm's work hours to accommodate Ms. Chisholm's request. Ms. Chisholm's hourly wage is \$8.00.

Ms. Chisholm established a claim for benefits that was effective June 1, 2014. Workforce Development calculated Ms. Chisholm's weekly benefit amount at \$168.00. A comparison on wages that Ms. Chisholm has reported to Workforce Development and the actual gross wages for the weeks involved in the is set forth below:

<u>Week ending</u>	<u>Wages reported</u>	<u>Actual wages</u>	<u>Additional information</u>
06/07/14	160.00	152.00	(Scheduled for 33 hrs., worked 19)
06/14/14	160.00	128.00	(Scheduled for 19 hrs., worked 16)
06/21/14	180.00	220.00	(Scheduled for 27 hrs., worked 27)
06/28/14	160.00	216.00	(Scheduled for 34 hrs., worked 27)
07/05/14	160.00	216.00	(Scheduled for 7 hrs., worked 7) (Received 20 hours of vacation pay)
07/12/14	120.00	112.00	(Scheduled for 14 hrs., worked 14) (On unpaid vacation 7/6 – 7/9)
07/19/14	135.00	184.00	(Scheduled for 34 hrs., worked 23)

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment

insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Administrative Code rule 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Each of these provisions applies to Ms. Chisholm and adds up to her not meeting the availability requirements since she established her claim for benefits. The only basis for the reduction in work hours is Ms. Chisholm's request to reduce her work hours. The employer had not on its own reduced the work hours. There was no change in the hourly pay. Because the reduction in hours was not initiated by the employer, Ms. Chisholm cannot use the reduction in hours as a basis for a claim for unemployment insurance benefits. The reduction in work hours resulted from serious illness. Ms. Chisholm was and is under the care of a physician who has recommended that she work only part time. Ms. Chisholm's work hours were further reduced by her absences from scheduled shifts and by her decision to take time away from work. During the week that ended June 6, Ms. Chisholm was scheduled to work 33 hours, but only worked 19 of those hours. During the week that ended June 14, Ms. Chisholm was scheduled to work 19 hours, but only worked 16. During the week that ended June 28, Ms. Chisholm was scheduled work 34 hours, but only worked 27. During the week that ended July 5, Ms. Chisholm elected to work only 7 hours and elected to use 20 hours of vacation pay benefit. During the week that ended July 12, Ms. Chisholm elected not to be available for work during the July 6-9, and elected only to work 14 hours. During the week that ended July 19, Ms. Chisholm was scheduled to work 34 hours, but only worked 23.

Even if the reduction in hours had been initiated by the employer, and it was not, Ms. Chisholm's gross wages for the weeks ending June 21, June 28, July 5, and July 19, 2014, exceed her weekly benefit amount by more than \$15.00 and would preclude her from being partially unemployed under the law.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

Because the employer did not initiate the reduction in hours and has continued to have the same full-time work available for Ms. Chisholm, the employer's account will not be charged for benefits.

**DECISION:**

The claims deputy's June 26, 2014, reference 01, is affirmed. The claimant has not met the work availability requirement since she established her claim for benefits. The claimant, not the employer initiated the reduction in work hours. The employer has had the same hours and wages available for the claimant and the claimant has not been partially unemployed since she established her claim. Benefits are denied effective June 1, 2014.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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