

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELISHA F ROBINSON

Claimant

APPEAL NO: 13A-UI-00557-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW MIDWEST RENTALS LLC

Employer

OC: 11/25/12

Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available
Section 96.7-2-a(2) – Employer Relief of Charges
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 14, 2013, reference 01, that held the claimant was eligible for benefits as a part-time employee effective November 25, 2012, and the employer was denied a relief of charges. A hearing was held in Des Moines, Iowa on February 26, 2013. The claimant did not participate. Pam Tedesco, Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

The issue is whether the claimant is able and available for work.

The further issue is whether the employer should be relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began work for the employer as a part-time cashier beginning August 27, 2012. When hired, claimant agreed to work at any of three east side business convenience stores with preference for one that was closer to her residence. Claimant agreed to work any day of the week except Friday.

From the week ending November 8 through November 29 claimant worked a range of 21.5 to 34 hours. On November 28 she made a written request to the store manager to limit her workdays to Friday, Saturday and Sunday. The employer agreed. This limited the amount of work hours the employer could offer claimant at the store location where she worked. Claimant also worked fewer hours because she refused to go to the other east side stores where she had worked.

Claimant quit showing up for work on January 25, 2013. She failed to respond to the hearing notice to appear for this hearing.

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 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 administrative law judge concludes that the claimant is not eligible for benefits effective November 25, 2012, because she is not able and available for work for the employer due to placing limitations on her work availability.

The claimant limited her work availability from six to three days and refused to work at other area stores where she had performed work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The administrative law judge further concludes the January 25, 2013 employment separation issue is remanded to Claims for a department fact finding.

DECISION:

The department decision dated January 14, 2013, reference 01, is reversed. The claimant is not eligible for benefits effective November 25, 2012, as she does not meet the availability requirements of the law. The January 25, 2013 employment separation issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css