

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIELLE COFFEE
Claimant

APPEAL NO: 15A-UI-07150-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLB OF IOWA LC
Employer

OC: 05/10/15
Claimant: Appellant (1-R)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 29, 2015, 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 July 28, 2015. The claimant participated in the hearing. Karen Beard, Human Resources Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she 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: A disqualification decision was mailed to the claimant's last known address of record on May 29, 2015. The claimant received the decision June 9, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 8, 2015. The appeal was not filed until June 22, 2015, which is after the date noticed on the disqualification decision. The claimant testified she faxed in her appeal June 12, 2015, but sent it to the wrong number and consequently the Appeals Bureau did not receive it. The claimant contacted the Department on another matter and was told her appeal on this decision was not received. She then submitted her appeal June 22, 2015. Because the claimant received the decision one day after it was due and her fax was sent to the wrong number, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired as a part-time associate for SLB of Iowa (Panera Breads). She was not guaranteed a certain number of hours at the time of hire. The claimant indicated on her application she was available for work nights, weekends, weekdays, and mornings. The

claimant received 17.07 hours for the pay period ending April 19, 2015; she received 35.50 hours for the pay period ending May 3, 2015; and she received 32.19 hours for the pay period ending May 17, 2015.

The claimant was scheduled to work Saturday, May 23, 2015, but called in before her shift and told her manager it was not worth her time to come in for her shift because she would have to pay for childcare. The employer prepared a written warning for the claimant but she never returned to work and did not receive the warning. The claimant maintains the employer stopped scheduling her after June 3, 2015, when she was scheduled to work three hours and told the employer she was going to come in but was upset about it and the employer told her not to worry about it. The employer considered the claimant to have voluntarily quit her job. That issue has not yet been adjudicated by the Department.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages as contemplated in the original contract of hire at the time of her separation from this employer.

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 associate for Panera. There had been no separation from her part-time employment at the time the claimant filed her claim for benefits. Prior to her separation from this employer, the claimant was working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her part-time employment.

DECISION:

The May 29, 2015, reference 03, decision is affirmed. The claimant's appeal is timely. The claimant was still employed at the same hours and wages as in her original contract of hire at the time of separation 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. The issue of the claimant's separation from this employer has not yet been heard and adjudicated by the Claims Section. That matter is remanded to the Claims Section for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs