

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRENDA A ELLIS**  
Claimant

**CHEF IVOS INC**  
Employer

**APPEAL 15A-UI-00962-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/21/14  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 13, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2015. Claimant participated. Employer participated through Ivo Puidak, Owner. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Is the claimant able and available for work or is she still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a bartender/server beginning in August 2014 through date of hearing as she is still employed. This business is seasonal and routinely shuts down or reduces hours in the winter time as there just is not business during the cold snowy months to justify staying open. The claimant was hired like all other employees with no guarantee of hours or shifts. While she may have worked more hours during the busy season, she was not guaranteed shifts during any time of year. The employer has divided up the remaining shifts amongst all employees. Those employees who are able to work in a variety of areas of the business, like cooks or retail sales people, are given more shifts to work since they can perform more functions. The claimant is not being treated any differently than any other employee. There is simply less work during the off season.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 administrative law judge is not persuaded that the claimant was guaranteed any number of hours or shifts. The very nature of the business is seasonal and she was hired to work part time. She is still working part time. Accordingly, benefits are denied.

**DECISION:**

The January 13, 2015, reference 01, decision is affirmed. The claimant is not able to work and available for work effective December 21, 2014. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs