

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA SCHERER**  
Claimant

**APPEAL NO. 10A-EUCU-00229-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**Original Claim: 05/10/09  
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Cynthia Scherer (claimant) appealed an unemployment insurance decision dated March 19, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits because she was working at the same hours and wages with Von Maur, Inc. (employer) as in her original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2010. The claimant participated in the hearing. The employer participated through Michelle Farmer, Store Manager and Misty Mildren, Floor Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time sales associate on November 13, 2006 with a guarantee of 19 hours per week. She is still working those same hours and there has been no separation from her part-time employment. The claimant did separate from a full-time employer in Illinois.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for 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:

*<http://www.iowaworkforce.org/ui/appeals/index.html>*

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".

871 IAC 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 sales associate. 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 her original contract of hire. The claimant is disqualified from receiving benefits from this employer.

**DECISION:**

The unemployment insurance decision dated March 19, 2010, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw