

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L DONALDSON
Claimant

APPEAL NO. 11A-UI-14009-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 09/25/11
Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 18, 2011, reference 01, decision that allowed benefits based on an Agency conclusion that the claimant was partially unemployed from Fareway Stores, Inc.. After due notice was issued, a hearing was held on November 17, 2011. Claimant Michelle Donaldson participated. Theresa McLaughlin, Human Resources Generalist, represented the employer. The administrative law judge took official notice of the Agency's administrative records (DBRO) of wages reported by or for the claimant and benefits disbursed to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was partially unemployed from her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Donaldson has been employed by Fareway Stores, Inc., as a part-time cashier since 1998. Ms. Donaldson filed a claim for unemployment insurance benefits that was effective September 25, 2011, based on her belief that the employer had gradually reduced her work hours. Ms. Donaldson's weekly benefit amount was set at \$69.00.

Since January 1, 2011, Ms. Donaldson's weekly work hours have ranged from three hours during the week that ended July 16, 2011 to 15.8 hours for the week that ended February 12, 2011. Ms. Donaldson's average weekly work hours since January 1, 2011 has been 7.3. Ms. Donaldson has only worked 10 or more hours per week on eight occasions since January 1, 2011.

Since Ms. Donaldson established her claim for unemployment insurance benefits, there has not been a dramatic change in the number of hours the employer has made available to her when

compared to the 2011 weekly average. Her average weekly work hours for the weeks ending October 1 through October 29, 2011—those weeks that fall within the claim for benefits—has been 5.82.

Ms. Donaldson's average weekly work hours have substantially dropped from those she enjoyed during the base period. Ms. Donaldson's average weekly wage from Fareway during her base period of April 1, 2010 through March 31, 2011 had been \$122.85. Ms. Donaldson's hourly wage is \$10.50. The \$122.85 average week wage from the base period translates to at least an average of 11.7 hours per week. Ms. Donaldson has not restricted her availability for work or refused work the employer had available to her.

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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.]

The weight of the evidence indicates that Ms. Donaldson has been able to work and available for work since she established her claim benefits. Though Ms. Donaldson has some health issues, these do not prevent her from being able and available for work. The weight of the evidence supports Ms. Donaldson's assertion that there has been an erosion of her work hours in 2011 when compared to her base period. The weight of the evidence establishes that Ms. Donaldson has been partially unemployed since she filed the claim for benefits that was effective September 25, 2011. Ms. Donaldson is eligible for benefits during those weeks when her wages totaled \$84.00 or less, which amounts to her weekly benefit amount plus \$15.00. See Iowa Code section 96.19(38)(b). The employer's account may be charged for benefits paid to Ms. Donaldson.

Ms. Donaldson is required to accurately report her gross weekly wages when she makes her weekly claim for benefits.

DECISION:

The Agency representative's October 18, 2011, reference 01, is affirmed. The claimant has been able and available for work since establishing her claim for benefits. The claimant has been partially unemployed since she established her claim for benefits and is eligible for benefits during any week when her gross wages did not exceed her weekly benefit amount plus \$15.00. The employer's account may be charged. The claimant is required to accurately report her gross weekly wages to Workforce Development for each week she claims benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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