

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
<b>ANGELA ALLEN</b> Claimant	<b>APPEAL NO. 08A-UI-05243-BT</b>
<b>SKIPS INC</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 04/13/08 R: 02</b> <b>Claimant: Appellant (1)</b>

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

**STATEMENT OF THE CASE:**

Angela Allen (claimant) filed a timely appeal to an unemployment insurance decision dated May 15, 2008, reference 02, which held that she was not eligible for unemployment insurance benefits because she is still employed with Skips, Inc. (employer) at the same hours and wages 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 June 16, 2008. The claimant participated in the hearing. The employer participated through John Bachman, Manager. Exhibit D-1 was admitted into evidence. 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 still working the same hours and wages with the 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 on September 11, 2006 as a part-time waitress. She reduced her availability because she is going to school full-time but continues to be employed in the same capacity.

**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:

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 waitress. She voluntarily reduced her availability with this employer because she is going to school on a full-time basis. However, there has been no separation from her part-time employment and she is currently working at the same hours and wages as contemplated in her original contract of hire. The claimant is disqualified from receiving benefits.

**DECISION:**

The unemployment insurance decision dated May 15, 2008, reference 02, is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw