

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LINDA S DUKE-HOLMES  
616 BENTON AVENUE E  
ALBIA IA 52531

SECURITAS SECURITY SERVICES USA  
SHEAKLEY UNISERVICE INC  
P O BOX 429503  
CINCINNATI OH 45242

Appeal Number: 04A-UI-02025-BT  
OC: 07/06/03 R: 03  
Claimant: Respondent (4/R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Securitas Security Services USA, Inc. (employer) appealed an unemployment insurance decision dated February 12, 2004, reference 04, which held that Linda Duke-Holmes (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 15, 2004. The claimant participated in the hearing. The employer participated through Shelsie Greenfield, Human Resources Manager, and Representative Terry Claton of Sheakley Uniservice.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant separated from her full-time employer on July 4, 2003. The

claimant was hired as a part-time security officer with her current employer on August 22, 2003 and she continues to be employed in that same capacity. She was guaranteed 20 hours per week and has been working at least 32 hours per week since January 2004.

#### 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 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".

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 security officer. 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. She is typically working even more hours than guaranteed. The claimant is disqualified from receiving benefits from this employer. However, the claimant is separated from her full-time employer and this case is remanded for a determination on whether the claimant is eligible for benefits from that separation.

#### DECISION:

The unemployment insurance decision dated February 12, 2004, reference 04, is modified in favor of the appellant. The claimant is still employed at the same hours and wages as in her original contract of hire and is therefore not qualified for benefits based on her part-time employment. The employer's account is not subject to charge. This case is remanded for an investigation and determination on whether the claimant is eligible for benefits based on her separation from her previous full-time employment.

sdb/s