

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

CRYSTAL M BOATWRIGHT  
903 WALLER ST  
CHARLES CITY IA 50616-0000

CEDAR VALLEY LUBES INC  
600 GILBERT  
CHARLES CITY IA 50616-0000

Appeal Number: 04A-UI-01506-B4T  
OC: 01/11/04 R: 02  
Claimant: Appellant (1)

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Crystal M. Boatwright appealed from an unemployment insurance decision dated January 27, 2004, reference 02, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits because she was working enough hours to be considered employed with Cedar Valley Lubes, Inc. The claimant did not meet the availability requirements of the law and benefits were denied effective January 11, 2004.

A telephone conference hearing was scheduled and held on February 26, 2004. Crystal M. Boatwright participated. Marlys Parks, Vice President and Co-Owner participated on behalf of Cedar Valley Lubes, Inc.

## FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Crystal M. Boatwright was initially employed as a cook at Cedar Valley Lubes, Inc., in October 2001. In June 2002, the claimant was changed to the position of a store clerk and remains in her position under the same terms and conditions as she was originally hired. The claimant's wages were \$6.50 per hour. The claimant was initially employed working approximately 15 hours per week, but now is employed in a position as store clerk working 22 hours each week. The claimant works from 5:00 to 10:00 p.m. on Sundays, Mondays, Wednesdays, and Thursdays. Work continues to be available under the same terms and conditions as the claimant was originally employed.

## 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".

871 IAC 24.23(23), (26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(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 evidence in the record clearly establishes that the claimant remains employed with Cedar Valley Lubes, Inc., under the same terms and conditions as she was initially hired. While the claimant's job changed from that of a cook to a store clerk, the claimant still is paid wages at the rate of \$6.50 per hour. In June 2002, when the claimant became a store clerk she commenced working 22 hours per week on four separate days each week from 5:00 p.m. to 10:00 p.m. Under such circumstances, the claimant is working to such a degree that removes her from the labor market.

In addition, the claimant is still employed at the same hours and wages as she was originally hired and continued to work as a store clerk.

The administrative law judge concludes that Crystal M. Boatwright is not eligible to receive unemployment insurance benefits because she does not meet the availability requirements of the law and benefits are denied effective January 11, 2004 within the intent and meaning of Iowa Code Section 96.4-3 and the foregoing sections of the Iowa Administrative Code.

**DECISION:**

The unemployment insurance decision dated January 27, 2004, reference 02, is affirmed. Crystal M. Boatwright is not eligible to receive benefits effective January 11, 2004.

kjf/kjf