

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JACKLYN R DONATH**  
Claimant

**APPEAL 15A-UI-07421-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MUSCATINE COMMUNITY Y**  
Employer

**OC: 05/31/15  
Claimant: Appellant (4R)**

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Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 25, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2015. Claimant participated. Employer participated through Bret Olson, Executive Director.

**ISSUE:**

Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a fitness instructor beginning August 5, 2014 through date of hearing as she remains employed.

The claimant has other wages in her base period from a full-time employer. She has been separated from that full-time employer. No fact-finding or initial review and determination has been held on the claimant's separation from her full-time employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

Iowa Admin. Code r. 871-24.23(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 is not eligible for unemployment insurance based upon her work for this employer as she is still working to the same degree as at the time of her hire. However, she may be eligible for partial unemployment based upon the wages from her full-time employment in her base period. Accordingly, the account of this employer shall not be charged.

**REMAND:**

The claimant's separation from her full-time employment with Muscatine Community School District is remanded for an initial review and determination.

**DECISION:**

The June 25, 2015, reference 02, decision is modified in favor of the appellant. The claimant is still working at the same hours and wages for this part-time employer as at the time of hire. Thus, no charges shall be made to the account of this employer, (Account number 527614). However, the claimant may be partially unemployed. That issue is remanded to the UISC for an initial review and determination.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs