

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA W MAY**  
Claimant

**APPEAL NO. 12A-UI-09421-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 07/01/12**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated July 30, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 29, 2012. The claimant participated personally. The employer participated by Baley Lee, program supervisor. The record consists of the testimony of Diana May and the testimony of Baley Lee. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant is still employed at the same hours and wages.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer as a case worker. The claimant was hired on August 29, 2005, as a part-time worker. A part-time worker has scheduled hours of 24 to 31 hours per week. The claimant's status was changed to occasional on January 5, 2006. An occasional worker is scheduled for 0 to 23 hours per week. The amount of hours worked is dependent upon the employer's need. There is no guarantee of a certain number of hours per week. The claimant's current wages are \$12.55 per hour. She was hired at \$12.10 per hour.

**REASONING AND CONCLUSIONS OF LAW:**

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.

For the reasons stated herein, the administrative law judge concludes the claimant is disqualified from benefits effective July 1, 2012 for being unavailable for work. She is still employed at a part-time job at the same hours and wages as contemplated under the original agreement of hire. The claimant has, since January 5, 2006, been classified as an occasional worker. An occasional worker works 0 to 23 hours per week. This is the claimant's contract of hire. The claimant is still employed and her hourly wage has not been reduced since that contract of hire on January 5, 2006.

The claimant testified that she filed this claim because she lost a client. When her actual reported wages are reviewed, she earns in excess of her weekly benefit amount with the exception of the week ending August 11, 2012. The only reason she worked less that week is that a client may have been on vacation and not needed her services. She would not have been eligible for benefits in any of the weeks in which she has applied.

**DECISION:**

The representative's decision dated July 30, 2012, reference 01, is affirmed. The claimant is still employed in a part-time capacity at the same hours and wages contemplated at the time of hire. She is therefore disqualified from benefits for being unavailable for work.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw