

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUANN MUMEY**  
Claimant

**APPEAL NO: 09A-UI-01903-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINEO PAYROLLING INC**  
Employer

**OC: 11/30/08 R: 04  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Luann Mumey (claimant) appealed an unemployment insurance decision dated February 3, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she is still employed at the same hours and wages with Pineo Payrolling, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2009. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, 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 employed at the same hours and wages.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was originally hired in 2006 as a part-time, on-call restaurant employee working at the Palmer Hills Golf Course. She knew at the time of hire that she would not be working for approximately three months of the year and that has not changed. She was most recently hired in March 2008 and there have been no changes in her hours or wages. The claimant testified she is not interested in working all year long.

**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, on-call restaurant employee for approximately nine months of the year. 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. The claimant is disqualified from receiving benefits from this employer.

**DECISION:**

The unemployment insurance decision dated February 3, 2009, reference 01, is affirmed. The claimant does not meet the eligibility requirements of the law and does not qualify for unemployment insurance benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs