

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA WATERS
Claimant

APPEAL NO. 10A-UI-16831-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 10-03-10
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 8, 2010, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 8, 2010. The claimant participated in the hearing. Tara Wiedner, Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time agent for Focus Services March 14, 1991, and continues to be employed in that capacity. On September 4, 2010, the claimant was in a car accident and was off work from September 8 through September 16, 2010. She returned to work September 21, 2010, but was restricted to working four hours per day. On October 3, 2010, she went to work on a Sunday and worked for three hours before she was logged out of the computer system, so her supervisor sent her home and she lost an hour of pay. On October 4, 2010, she went to work and the computer would not take her password. She waited while her supervisor tried to figure out what was wrong. After trying for two hours, he could not fix it and sent her home, so she lost two hours of pay. Her supervisor also instructed her to call in every day to see if the computer problem was fixed and to stay home if it was not. The claimant called in October 5, 6, and 7, 2010, but her log-in was not available. At that point, she decided to file for unemployment benefits. She was off work until October 11, 2010, when she received a new password and worked four hours. When she went to work October 12, 2010, her log-in would not work again and she sat there for three hours before being instructed to go and observe another agent. On October 13, 14, and 15, 2010, she called the employer before reporting for work and was told she still could not log on, so she was off work those days. She was on vacation the week of October 18, 2010, and when she returned October 27, 2010, the problem was solved and has not resurfaced. The claimant claimed and received partial unemployment insurance benefits for the five weeks ending November 6, 2010, with the exception of the week ending October 30, 2010, when she reported vacation pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire effective the week ending October 9, 2010 through the week ending November 6, 2010, excluding the week ending October 30, 2010, when she reported vacation pay.

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".

The claimant was hired as a part-time agent. While there has been no separation from this employer, the claimant did not work the same hours or earn the same wages the five weeks ending November 6, 2010, with the exception of the week ending October 30, 2010, for which she reported vacation pay. She was unable to work her regular hours during those weeks because she could not use her computer and her supervisor told her to stay home or sent her home. Consequently, the administrative law judge concludes the claimant is eligible for benefits for the five weeks ending November 6, 2010, with the exception of the week ending October 30, 2010, when she reported vacation pay.

DECISION:

The December 8, 2010, reference 01, decision is reversed. The claimant did not work the same hours and wages as originally contemplated in the contract of hire the five weeks ending November 6, 2010, with the exception of the week ending October 30, 2010, when she reported vacation pay. The claimant is eligible to receive unemployment insurance benefits for the five weeks ending November 6, 2010, with the exception of the week ending October 30, 2010, when she reported vacation pay, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw