

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KRISTINE A HOBSON**  
Claimant

**J & L INVESTMENTS INC**  
Employer

**APPEAL 17A-UI-08213-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/16/17**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the August 7, 2017 (reference 02) unemployment insurance decision that found claimant was eligible for unemployment benefits because she was not performing services in the same pattern of employment as in her base period. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2017. The claimant, Kristine A. Hobson, participated personally. The employer, J & L Investments Inc., participated through witness Jessica Hamlin. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Is the claimant able to work and available for work effective July 16, 2017?  
Is claimant employed for the same hours and wages?  
Is the claimant eligible to receive partial benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time for this employer from February 23, 2016 until August 27, 2017 when she separated from employment. Claimant was a crew member in the employer's fast food restaurant. Her job duties included cleaning, stocking, and assisting customers.

When claimant was hired, she was not guaranteed a certain number of hours per week as a part-time employee. She typically worked Monday, Tuesday, Friday, Saturday and Sunday each week. Her hours were typically from 8:45 a.m. to 4:00 p.m. On occasion, she would come in an hour early for a shift or stay an hour later for a shift.

Claimant injured her shoulder on the job in October of 2016. She was not working due to her work-related injury from December 27, 2016 to March 27, 2017. When claimant returned to work she had lifting restrictions from her doctor, which the employer accommodated. Claimant was released to full duty without any work restrictions effective June 27, 2017.

In July of 2017, claimant decided to have Friday and Saturdays off each week so that she could attend to personal matters and look for a different job. Claimant submitted a new availability statement to her employer. See Exhibit 1.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment and whether that separation disqualifies her from receipt of benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

In this case, the claimant reduced her hours voluntarily by requesting that she not work on Friday and Saturday each week. Claimant's unilateral decision in reducing her own hours means that she is not available for work pursuant to Iowa Admin. Code r. 871-24.23(16). Benefits are denied.

**DECISION:**

The August 7, 2017 (reference 02) decision is reversed. Claimant is unavailable for work and not eligible to receive benefits effective July 16, 2017.

**REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs