

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY R ROHWER
Claimant

APPEAL NO: 14A-UI-07067-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETTENDORF COMMUNITY SCHOOL
Employer

OC: 06/01/14
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 25, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 1, 2014. The claimant participated in the hearing. Maxine McEnany, Director of Finance, 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 separated from her full-time employer, Family Resources Inc., on June 2, 2014. She was hired as an on-call substitute para-educator and secretary for Bettendorf Community School from September 1, 2010 and continues to be employed in that capacity with no change in her hours or wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire but is eligible for benefits based on her previous full-time employment.

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 was hired as an as-needed substitute para-educator and secretary. There has been no separation from her as-needed, part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her part-time employment. However, the claimant has a qualifying separation from her full-time position with Family Resources Inc. and is eligible for benefits based on that separation, provided she is otherwise eligible.

DECISION:

The June 25, 2014, reference 01, decision is modified in favor of the appellant. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her as-needed, part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment. The claimant is eligible for benefits based on her separation from her full-time employment with Family Resources, Inc., provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can