

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**QUISHEA PHILLIPS**

Claimant

**APPEAL NO: 08A-UI-02337-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOSTON WINDOW CLEANING INC**

Employer

**OC: 02/10/08 R: 03  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Boston Window Cleaning, Inc. (employer) appealed an unemployment insurance decision dated March 4, 2008, reference 01, which held that Quishea Phillips (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Heather Seda, Area Manager and Laura Gawronski, Employer Representative. 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 able and available to work.

**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 hired as a full-time cardboard recycler but requested to go to a part-time basis on February 1, 2008 for personal reasons. Full-time work is still available.

The claimant filed a claim for unemployment insurance benefits effective February 10, 2008 but has not received benefits after the separation from employment.

**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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant was hired full-time but voluntarily reduced her hours to part-time for personal reasons even though full-time hours are still available. The claimant is restricting her own availability and benefits are therefore denied.

#### **DECISION:**

The unemployment insurance decision dated March 4, 2008, reference 01, is reversed. Benefits are denied as the claimant does not meet the availability requirements of the law. There is no overpayment as a result of this decision.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs