

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY YARGES

Claimant

APPEAL NO. 07A-UI-04770-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIVIC CTR OF GREATER DES MOINES INC

Employer

**OC: 04/08/07 R: 02
Claimant: Appellant (1)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Kathy Yarges (claimant) appealed a representative's May 8, 2007 decision (reference 01) that held she was not eligible to receive unemployment insurance benefits because she was still employed in her part-time on-call job with the Civic Center of Greater Des Moines, Inc. (employer) in the same capacity that she has always worked for the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2007. The claimant participated in the hearing. Bill McElrath, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible to receive benefits when she still works as an on-call employee for the employer?

FINDINGS OF FACT:

The employer hired the claimant as a wardrobe assistant on a part-time/as-needed basis in May 2002. The claimant still works in this capacity with no change in her hours or wages (except for raises she has received). The claimant works major shows held at the Civic Center, which means she works seven or eight weeks a year for the employer.

REASONING AND CONCLUSIONS OF LAW:

To be eligible to receive benefits, the claimant must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not available for work when she 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. 871 IAC 24.23(26).

The claimant was hired on a part-time/as-needed basis. 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. Based on her employment with the employer, the claimant is not eligible to receive benefits as of April 8, 2007.

DECISION:

The representative's May 8, 2007 decision (reference 01) is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied as of April 8, 2007.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css