

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLEY I FARRIS
Claimant

APPEAL NO: 10A-UI-03511-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST HOSPITALITY GROUP LLC
Employer

OC: 01/31/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's March 3, 2010 decision (reference 01) that held her ineligible to receive benefits because she was still working for the employer at the same hours and wages that she had been hired to work. A telephone hearing was held on April 12, 2010. The claimant participated in the hearing. Judy Johnson, a general manager for another motel the employer owns, 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 still working the same hours and wages that the employer initially hired her to work?

FINDINGS OF FACT:

The claimant started working as an as-needed housekeeper in August 2008. The claimant works at Quality Inn. When Quality Inn has work for the claimant to do, she is called. The claimant's hours of work vary in accordance with how people stay at Quality Inn.

The claimant established a claim for benefits during the week of January 31, 2010, because Quality Inn did not have work for her to do. The only work the claimant has done from January 31 through April 3, 2010 was during the week ending February 13 when she earned \$21.00.

REASONING AND CONCLUSIONS OF LAW:

The employer hired the claimant to work as an as-needed housekeeper. During her employment, the claimant has worked varying hours. Since January 31, 2010, the employer has not had work for the claimant to do. With the exception of one week, the claimant has not worked or earned any wages. The claimant remains an employee who is waiting to be called back to work.

The claimant is eligible to receive benefits because although she is able to and available for work, the employer does not have work for her to do. Iowa Code § 96.4-3. When a claimant is still employed in a part-time job at the same hours and wages as she was hired and is not working on a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). Based on the facts in the case, as of January 31, 2010, the claimant is eligible to receive benefits as of January 31, 2010, because she is on a short-term layoff. The claimant is not working because the employer does not have work for her to do. Therefore, 871 IAC 24.23(26) does not apply in this case.

DECISION:

The representative's March 3, 2010 decision (reference 01) is reversed. Although the claimant is able to and available for work, as of January 31, 2010 she has been temporarily laid off from work. As of January 31, 2010, the claimant is eligible to receive benefits because she is working a reduced workweek or not at all because of the employer's current lack of work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css