

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHELBY R MILLER**  
Claimant

**BURLINGTON COAT FACTORY OF IOWA**  
Employer

**APPEAL 15A-UI-06415-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/15**  
**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 21, 2015, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 30, 2015. Claimant participated. Employer did not participate.

**ISSUES:**

Is the claimant still employed for this employer at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a merchandising team beginning on June 2013 through date of hearing as she remains an employee. The claimant was promised no set hours and given no guarantee of hours when hired. She was working part time for this employer and part time for another employer. She was separated from her employment with her other employer three days prior to the hearing on this case and no fact-finding interview has been held as of yet on that separation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 is working roughly the same hours and wages as at the time of hire. She was not guaranteed any specific shift or number of hours of work which is the nature of the part-time work. Accordingly, benefits must be denied.

**REMAND:**

The claimant has had a separation from another employer that may make her eligible for partial unemployment insurance benefits. The claimant's separation from The Bon-Ton Department Store is remanded to the UISC for an initial determination.

**DECISION:**

The May 21, 2015, reference 03, decision is affirmed. The claimant is not able to work and available for work effective April 26, 2015. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs