

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY JANSSEN
Claimant

APPEAL NO: 16A-UI-06829-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIDS WORLD INC
Employer

OC: 05/22/16
Claimant: Appellant (4)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 24, 2016, 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 July 20, 2016. The claimant participated in the hearing. Tiffany Macke, Executive Director, 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 was hired as a part-time teacher assistant for Kids World May 23, 2014, and continues to be employed in that capacity with no change in her hours or wages. She separated from her full-time employer, New Opportunities, May 23, 2016, when she was laid off due to a lack of work. She will return to work with New Opportunities August 17, 2016.

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 layoff from her 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 a part-time teacher assistant. 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 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 New Opportunities and is eligible for benefits based on that separation, provided she is otherwise eligible.

DECISION:

The June 24, 2016, 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 is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on her part-time employment. The claimant is eligible for benefits based on her layoff from her full-time employment with New Opportunities, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs