

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICIA A BENTLEY
Claimant

APPEAL NO. 16A-UI-02760-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFTY KIDS KLOTHING INC
Employer

OC: 01/31/16
Claimant: Appellant (5)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 25, 2016 (reference 01) which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on March 29, 2016. Claimant participated personally. Employer participated by Nichole Bergman. Claimant's Exhibits A through H were admitted into evidence.

ISSUES:

Whether claimant is able and available for work.

Whether claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant continues to work for employer at this time. Claimant has continued to receive hours at or near her scheduled hours that have been understood for years. When claimant has received fewer hours it has been because claimant has been ill or has had medical appointments.

REASONING AND CONCLUSIONS OF LAW:

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.

Claimant has continued to be scheduled to work at or near the same part-time hours for which she was hired. Any decrease in hours below those for which she'd been scheduled were as a result of claimant being ill or having medical issues she was attending to. Claimant is not partially unemployed. Benefits are denied.

DECISION:

The decision of the representative dated February 25, 2016 (reference 01) is modified with no change in effect. Claimant has at all times been willing to work the assigned hours. Claimant has simply had illnesses which have not allowed her to work all of the scheduled hours. As any decrease in hours worked were as a result of illnesses, claimant is not working a reduced workweek and cannot be considered partially unemployed.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/can