

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVON YEGGY
Claimant

APPEAL NO: 08A-UI-00590-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY HOSPICE INC
Employer

**OC: 08/12/07 R: 03
Claimant: Respondent (4)**

Section 96.4-3 - Able and Available for Work
871 IAC 26.2 - Dismissed - Not a Contested Case

STATEMENT OF THE CASE:

Iowa City Hospice, Inc. (employer) appealed an unemployment insurance decision dated January 7, 2008, reference 03, which held that Lavon Yeggy (claimant) was eligible for unemployment insurance benefits. Due notice was issued scheduling the matter for a telephone hearing to be held February 4, 2008. However, since there is no dispute of material facts and because a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary.

ISSUE:

The issue is whether the claimant is able and available to work, and if so, whether she is still working at the same hours and wages as in her original contract of hire.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant separated from Elder Services, Inc., her full-time employer in June 2007 and Elder Services did not contest her claim for unemployment insurance benefits. She subsequently began working part-time for the employer herein on September 14, 2007 and continues to work in that same capacity with no change in her hours or wages.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

Iowa Code section 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".

871 IAC 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 part-time for the employer herein and there has been no separation from her part-time employment. She is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. Consequently, the claimant is disqualified from receiving benefits from this employer. However, the claimant is separated from her full-time employer and was previously receiving benefits based on the separation from her full-time employment.

DECISION:

The unemployment insurance decision dated January 7, 2008, reference 03, is modified in favor of the appellant. No disqualification is imposed on the claimant, and no charges shall be made to the account of this employer.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs