

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN HOLUBAR
Claimant

APPEAL NO: 06A-UI-08808-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JC PENNEY CORPORATION INC
Employer

**OC: 07-23-06 R: 02
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 19, 2006. The claimant participated in the hearing. Jerry Tetzlaff, Store Manager and Barb Bond, Office Associate, 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 separated from her full-time employer, J.C. Penney, in May 2005, when it downsized and she took early retirement. She was hired as a part-time replenishment/visual associate for J.C. Penney April 26, 2006, and continues to be employed in that capacity with no change in her hours or wages.

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 previous full-time employment.

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 as a part-time associate. 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, she has a qualifying separation from her full-time position with this employer and is eligible for benefits based on that separation, provided she is otherwise eligible.

DECISION:

The August 25, 2006, 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 therefore 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. She is eligible for benefits based on her separation from her full-time employment, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/cs