

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAYLA D BLOOM
Claimant

LIVE FOR TODAY LLC
Employer

APPEAL 15A-UI-03641-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/15/15
Claimant: Appellant (1R)

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 March 10, 2015, (reference 03) unemployment insurance decision that denied benefits based upon the claimant being still employed at the same hours and wages as hired. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2015. The claimant participated. The employer participated through April Crosser.

ISSUE:

Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired for the employer, who runs multiple businesses, beginning in February 2014, initially as a server at the Rose Restaurant. During the course of her employment, the claimant also worked for the employer at their gym and as a nanny to their daughter, Kinley. Based on the employer's business needs, the claimant would work between 18 and 30 hours per week, between the three businesses. The claimant was not guaranteed a set number of hours, but averaged 23 hours per week, and the claimant acquiesced to the balance of positions and influx of hours as she remained employed for several months under these conditions. The claimant's primary responsibilities at the end of her employment were in her capacity as a nanny.

On February 10, 2015, the claimant was caring for Ms. Crosser's daughter, Kinley, who injured her foot. As a result, the employer, through Ms. Crosser, decided to stay with her daughter the remainder of the week, rather than have the claimant watch her. To offset the hours she was not babysitting, the claimant was offered two shifts at the employer's restaurant for evening shifts on February 13 and 14, 2015. The claimant responded "that's fine" via text message but did not show up or inquire what time she needed to be there. The claimant was scheduled for additional work the following weeks both at the gym and as a nanny.

The claimant has since been permanently separated from employment. That separation has not yet been determined at the Claims level.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) and (29) provide:

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.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The unemployment insurance law provides that an individual be able to and available for work. The claimant's hours of work remained fairly stable throughout the course of her employment. She had no guarantee of any particular number of hours per week, and generally worked at all three businesses. The claimant refused to work hours available to her on February 13 and 14, 2015. Under these circumstances, the administrative law judge concludes the claimant is not able and available for work. Accordingly, benefits are denied.

DECISION:

The March 10, 2015, reference 01, decision is affirmed. The claimant is not able to work and available for work effective February 15, 2015. Benefits are denied. **REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css