

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA J BRAYTON

Claimant

APPEAL NO. 08A-UI-11543-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAKE CITY COUNTRY CLUB

Employer

**OC: 10-12-08 R: 01
Claimant: Respondent (1)**

Section 96.4-3 - Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 1, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 23, 2008. The claimant did participate. The employer did participate through Cheryl Ludwig, Clubhouse Manager.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cook/bartender part time beginning April 11, 2007 through date of hearing.

The claimant was initially hired to be a cook and bartender. She worked full time when full time hours were available mostly during the summer months when the club was open longer hours. In September 2007 the claimant was promoted to assistant manager and her duties included running the kitchen as well as performing bookkeeping duties. The claimant worked as the assistant manager, again working full time hours when work was available until October 2008 when she was demoted from the assistant manager back to a cook and bartender.

Ms. Ludwig told the claimant she was being demoted due to communication issues between herself and Ms. Ludwig as well as Ms. Ludwig's perception that the claimant was not performing her job duties correctly.

Ms. Ludwig perceived that the claimant was not doing the required bookkeeping duties, but Ms. Ludwig herself would often tell the claimant that she would write up the orders or prepare the daily deposit and not allow the claimant to perform it.

Ms. Ludwig and the claimant had personality conflicts that were due to communication issues, not as a result of the claimant performance of her job duties. Ms. Ludwig complained that on most occasions she would have to greet the claimant first, before the claimant would say hello to her.

While Ms. Ludwig alleges that there were customer complaints about the claimant, she never brought to the claimant's attention any customer complaints from anyone other than Tim prior to the claimant's demotion. Tim is a difficult member who has issues with more than just the claimant. The claimant did not mistreat Tim on any occasions.

The claimant's hours were reduced in part due to her demotion and in part due to a seasonal slow down in business.

In April 2008 the claimant was warned for excessive drinking on the job, but she was not demoted due to any issue of alcohol consumption.

The claimant's hours were reduced from full time to no more than ten to 15 hours per week after her demotion. Had the claimant not been demoted her hours still would have been reduced from full time to 20 or 25 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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's hours have been cut from full time to part time. While the employer alleges that the major reason the claimant is working less hours is due to her demotion for failure to properly perform her job duties, the administrative law judge cannot conclude that the claimant's

demotion was for job-related misconduct. The claimant was warned about alcohol consumption in April but her demotion did not have anything to do with her alcohol consumption. The claimant performed the duties to the best of her ability. Ms. Ludwig and the claimant simply have a personality or communication conflict. The administrative law judge cannot conclude from the evidence presented by the employer that the communication problems represent misconduct on the part of the claimant. Thus, the administrative law judge concludes that the claimant's regular hours have been reduced and she is entitled to unemployment insurance benefits. Accordingly, benefits are allowed.

DECISION:

The December 1, 2008, reference 01, decision is affirmed. The claimant is able to work and available for work effective October 12, 2008. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css