

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE A MANNING
Claimant

APPEAL NO. 12A-UI-00946-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

**OC: 05/08/11
Claimant: Appellant (1)**

Section 96.4-3 – Still Employed Same Hours and Wages
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated January 12, 2012, reference 03, which denied unemployment insurance benefits as of December 11, 2011 finding the claimant could not be considered partially unemployed because she was still employed at the same hours and wages as in the original agreement of hire. After due notice, a telephone hearing was held on February 21, 2012. Claimant participated. Employer participated by Mr. Joe Rausenberger, Superintendent.

ISSUE:

The issue is whether the claimant is still employed at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Renee Manning began employment with Employer's Service Bureau on February 28, 2011. Claimant continues to be employed at the time of hearing. Ms. Manning is assigned as a temporary worker at the Nestle Purina facility by Employer's Service Bureau. The claimant is on a long-term assignment. Work is available to the claimant most days of the work week, however, there are times when the services of the temporary workers are not needed.

On February 24, 2011, Ms. Manning attended orientation with Employer's Service Bureau. At that time employees were specifically informed that they were not guaranteed any minimum number of working hours per week as temporary employees assigned to the Nestle Purina facility.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant is still employed at the same hours and wages as agreed at the time of hire. She is.

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".

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 evidence in the record establishes that Ms. Manning is still employed at the same hours and wages as agreed upon at the time of hire. During orientation prior to beginning her work with Employer's Service Bureau, Ms. Manning and other new employees were specifically informed that the company does not guarantee any minimum number of working hours each week. Employees are assigned to work at the Nestle Purina facility, a client of Employer's Service Bureau. The number of employees needed at that facility varies from week to week and at times from day to day and, therefore, Employer's Service Bureau does not guarantee temporary workers that they will be working full time each week. The evidence in the record establishes that the claimant generally works at or near full time. Since the claimant is still employed at the same hours and wages as in the original agreement of hire, the claimant cannot be considered to be partially unemployed within the meaning of the Iowa Employment Security Law as of December 11, 2011.

DECISION:

The representative's decision dated January 12, 2012, reference 03, is affirmed. Claimant is not able and available for work as she is still employed at the same hours and wages as agreed upon at the time of hire. Benefits are denied as of December 11, 2011.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs