

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE M MUNSON
Claimant

APPEAL NO. 16A-UI-06149-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERDIAN CCO
Employer

OC: 05/01/16
Claimant: Appellant (3/R)

Section 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 23, 2016 (reference 02) which denied benefits as of May 1, 2016, finding that the claimant was still employed at the same hours and wages as in the original agreement of hire and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on June 20, 2016. The claimant participated. The employer participated by Ms. Renee McAtee and Ms. Misty Loza.

ISSUE:

At issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

Julie Munson, the claimant, began performing services as a part-time special needs provider for Misty Loza in September 2015. The claimant was hired to work 12 ½ hours per week and was paid at the rate of \$15.00 per hour.

Ms. Munson opened a claim for partial unemployment insurance benefits effective May 1, 2016, and was provided the informational and instructional brochures by Iowa Workforce Development that explained the unemployment compensation system and its requirements. At that time that Ms. Munson opened her claim for benefits, she continued to be employed part time at the same hours and wages as in the original agreement of hire. Although the claimant continued to be employed part time, working approximately the same hours and pay as agreed at the time of hire, Ms. Munson believed that she should be eligible to receive partial unemployment insurance benefits to supplement her income.

Later the employer questioned whether Ms. Munson was claiming work hours in excess of those actually worked and the claimant was separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Admin. Code r. 871-24.23(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.

In this case, the evidence in the record establishes that the claimant continued to be employed in a part-time job at the same hours and wages as in the original agreement of hire, and because she was still working part time at the agreed upon hourly rate she is not eligible to receive partial unemployment insurance benefits. The issue of whether the claimant was separated from employment under disqualifying conditions, is remanded to The Claims Division for investigation, and the issuance of an appealable decision.

DECISION:

The representative's decision dated May 23, 2016 (reference 02) is affirmed as modified. The portion of the decision finding that the claimant was employed part time at the same hours and pay as agreed upon is affirmed. The claimant is not eligible for partial unemployment benefits. The issue of the claimant job separation is remanded for investigation and decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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