

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARISSA PAULI
Claimant

APPEAL NO: 09A-UI-10174-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY ACTION OF EASTERN IOWA
Employer

OC: 06-07-09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 14, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2009. The claimant participated in the hearing. Pam Damhorst, Human Resources, 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 was employed as a full-time Head Start teacher with Community Action of Eastern Iowa on the twelve month program. On April 6, 2009, she sent a letter of intent e-mail to the employer stating she wanted to switch to the nine-month program or she would have to voluntarily leave her job. She did not want to work during the summer when the Head Start children were not there although the employer had full-time work available in the summer. The employer granted the claimant's request effective at the end of the school year which was June 5, 2009. She received her new nine-month contract stating she would return to work August 17, 2009. The claimant sent another e-mail April 10, 2009, saying she was available to work in June and July and would "love to work." She expected the new nine-month program to begin the following school year and assumed she would work throughout this summer and then start the nine-month program but instead it went into effect at the end of the 2008/2009 school year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's hours changed at her request.

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 full-time teacher in the Head Start program. There has been no separation from her employment but the claimant requested she be moved from the twelve-month program to the nine-month program so she would not be working during the summer. While the claimant expected the change to begin with the 2009/2010 school year it went into effect at the end of the current school year and it was not unreasonable for the employer to believe her request was to go into effect with the upcoming summer recess. The claimant received a new contract and will return to work August 17, 2009. Because the claimant initiated the change it cannot be attributable to the employer. Under these circumstances the administrative law judge cannot conclude that the claimant's hours changed due to the employer's actions when it is clear the change occurred at the claimant's request. Consequently, benefits must be denied.

DECISION:

The July 14, 2009, reference 01, decision is affirmed. The claimant requested a change in her hours from the twelve-month program to the nine-month program and therefore is not eligible for benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs