

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY R RUTHERFORD
Claimant

APPEAL NO: 17A-UI-08092-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAR-MAC OF MANNING LLC
Employer

OC: 07/09/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 31, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 13, 2017. The claimant participated in the hearing. Richard Ferreira, Program Director, 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 hired as a full-time caregiver for Char-Mac of Manning from June 1, 2016 to August 17, 2017.

In October 2016, the claimant gave her two-week notice but the employer said he was going to hold on to her notice and four days later the claimant was allowed to rescind her resignation. The employer continued hiring new employees, however, and the claimant's hours began to decrease. She picked up as many other shifts as she could but by March 2017, she was not getting 40 hours per week. For the two-week pay period ending March 11, 2017, the claimant received 73.12 hours; for the two-week pay period ending March 25, 2017, she received 72.07 hours; for the two week pay period ending April 8, 2017, she received 53.13 hours; for the two week pay period ending April 22, 2017, she received 62.22 hours; for the two week pay period ending May 6, 2017, she received 64.88 hours; for the two week pay period ending May 20, 2017, she received 49.92 hours; for the two week pay period ending June 3, 2017, she received 51.53 hours; for the two week pay period ending June 17, 2017, she received 57.68 hours; for the two week pay period ending July 1, 2017, she received 60.38 hours; for the two week pay period ending July 15, 2017, she received 22.85 hours; and for the pay period ending August 26, 2017, she received 8.18 hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire from the week ending July 15, 2017 through the week ending August 19, 2017.

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.

The claimant was hired as a full-time caregiver. There has been a subsequent separation from this employer. Prior to her separation, the claimant's hours were decreased and the claimant was not working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is eligible for benefits from the week ending July 15, 2017 through the week ending August 19, 2017.

DECISION:

The July 31, 2017, reference 02, decision is affirmed. The claimant's hours were decreased before her separation from this employer. Benefits are allowed from the week ending July 15, 2017 through the week ending August 19, 2017, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn