

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUADA BACEVAC
Claimant

APPEAL NO. 13A-UI-01356-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 12/23/12
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Target Corporation filed a timely appeal from a representative's decision dated January 30, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits beginning December 23, 2012 finding the claimant was employed part time or working on-call when work was available and finding the employer's account to be chargeable because the claimant was not performing services in the same pattern of employment as in the base period. After due notice was provided, a telephone hearing was held on March 20, 2013. Claimant participated. The employer participated by Ms. Amy Mosley, Human Resource Business Partner and Official Interpreter, Tanja Abramovic.

ISSUE:

The issue is whether the claimant is employed part time in performing services in the same pattern as in the base period.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Suada Bacevac began employment with Target Corporation on May 12, 2009. The claimant was hired to work as a full-time packer and was paid by the hour. Ms. Bacevac continues to be employed full time by Target Corporation at the time of hearing and is paid at a higher rate of pay per hour. Full-time working hours have been regularly available to the claimant, however, the claimant, at times, has chosen to work less than full-time hours although full-time work was available to her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Bacevac is still employed full time and whether the claimant is performing services in the same pattern of employment as in the base period. It does.

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 evidence in the record establishes that the claimant was hired to work full time by Target Corporation and that the claimant continues to be employed on a full-time basis at the time of hearing. The claimant continues to be paid at the same or greater rate of pay per hour and continues to be employed in the same pattern of employment as in her base period with Target Corporation. Ms. Bacevac at times chooses not to accept full-time hours that are available to her. This is the claimant's choice, however, any reduction in working hours is not attributable to the employer, therefore, the claimant is not eligible to receive partial unemployment insurance benefits for those weeks.

As it appears that the claimant has not claimed benefits based upon her employment with Target Corporation, the claimant has not been overpaid.

DECISION:

The representative's decision dated January 30, 2013, reference 01, is reversed. Claimant is not eligible to receive unemployment insurance benefits. Claimant is employed full time and continues to be employed in the same pattern of employment as in her base period with Target Corporation.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs