

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANI SCOTT
Claimant

APPEAL NO: 08A-UI-02959-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRANE SPECIALTY INC
Employer

OC: 02-17-08 R: 02
Claimant: Respondent (4)

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 March 20, 2008, 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 April 9, 2008. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Stan Kranovich, President, 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 works at a restaurant for the employer at the Iowa State Fair and other events as they come up and she is available. She returns to work the Fair each year and there has been no change in her hours or wages than that contemplated in the original contract of hire. The claimant appears to have full-time wages in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire but is eligible for benefits based on her previous full-time employment.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 part-time counter help to work during the Iowa State Fair. There has been no separation from her part-time employment and the claimant and employer anticipate she will return to work the 2008 Iowa State Fair. She is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her part-time employment. However, it appears she has a qualifying separation from her position with Hy-Vee and is eligible for benefits based on that separation, provided she is otherwise eligible.

DECISION:

The March 20, 2008, reference 02, decision is modified in favor of the appellant. The claimant is still employed at the same hours and wages as contemplated in the original contract of hire and therefore is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment. The claimant appears eligible for benefits based on her separation from her employment with Hy-Vee, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs