

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHABRINA L WILSON

Claimant

APPEAL NO. 09A-UI-15308-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACKERMAN INVESTMENT CO

Employer

OC: 08/30/09

Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages

Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

Shabrina Wilson filed a timely appeal from the September 30, 2009, reference 01, decision that denied benefits effective August 30, 2009 based on an Agency conclusion that she was still employed in the same capacity as existed at the time of hire. After due notice was issued, a hearing was held on November 13, 2009. Ms. Wilson provided a telephone number for the hearing, but was not available at that number at the time of the hearing. The administrative law judge made two attempts to contact Ms. Wilson and left two messages on her voice mail. Ms. Wilson did not respond. Molly Hiscox, Motel Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of the quarterly wages the employer has reported for the claimant.

ISSUES:

Whether Ms. Wilson has been partially unemployed at any point since she established the claim for unemployment insurance benefits that was effective August 30, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shabrina Wilson started her employment with Ackerman Investment Company in May 2008 and works as a part-time housekeeper. From the beginning of the employment, the number of shifts Ms. Wilson works per week has been contingent upon motel occupancy numbers. Ms. Wilson is always scheduled to work two shifts per week. Ms. Wilson is on-call for additional shifts. The shifts start at 8:00 a.m. and end sometime between 1:00 p.m. and 5:00 p.m., depending on the number of rooms to be cleaned. During July 2009, Ms. Wilson worked 51.5 and 51.75 per two-week pay period. In August 2009, Ms. Wilson worked 73.75 plus 2.5 hours of overtime during the first two-week pay period and 72.25 hours during the second two-week pay period. The increase in hours was attributable to an increase in occupancy numbers related to the Iowa State Fair and Special Olympics. In September 2009, Ms. Wilson's hours went down to the low end of her normal range. During the first two-week pay period, Ms. Wilson worked 36.25 hours. During the second two-week pay period, Ms. Wilson worked 25.25 hours. Ms. Wilson's hours then significantly increased to 62 during the first pay period in October. The fluctuation in hours,

with the minimum two shifts per week and additional on-call shifts as needed has remained the same throughout the employment.

REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Ms. Wilson did not participate in the hearing and, thereby, failed to present any evidence to support the allegation that the fluctuation in the part-time hours was not part of the employment from the start. Based on the weight of the evidence in the record, the administrative law judge concludes that the fluctuation in hours—with the two-shift minimum and additional on-call shifts—was the norm throughout the employment. Accordingly, Ms. Wilson cannot be deemed to have been partially unemployed during the brief period when her hours dipped to the low end of her normal range due to low occupancy numbers. Benefits are denied effective August 30, 2009.

DECISION:

The Agency representative's September 30, 2009, reference 01, decision is modified as follows. The claimant has not been partially unemployed since she established her claim for benefits.

The claimant is still employed under the same conditions as existed at the time of hire. Benefits are denied effective August 30, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs