

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CHRISTINE M RUBIO**  
Claimant

**APPEAL NO. 17A-UI-12035-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUPPORT SERVICES OF SOUTH CENTRAL**  
Employer

**OC: 10/29/17**  
**Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

Support Services of South Central (employer) appealed a representative's November 16, 2017, decision (reference 01) that concluded Christine Rubio (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 13, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Marie Warner, Director of Services. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable for work. .

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 28, 2014, as a part-time supported community living specialist. The employer notified the claimant that hours were contingent on the employer's needs. She became a full-time employee on October 20, 2015. On May 11, 2017, the claimant asked to become a part-time employee with varied hours effective June 3, 2017. She told the employer she was not available to work Tuesdays, Thursdays, and Fridays during the day or any 4:00 p.m. to 12:00 a.m. shifts. The claimant generally worked from 8:00 a.m. to 4:00 p.m. two days per week and sixteen hours on the overnight shift, every other weekend.

On October 18, 2017, the employer sent the claimant a text saying her hours during the week would be changing but the claimant could keep her every other weekend hours. The employer asked the claimant for her availability. The claimant told the employer when she was not available. The employer offered the claimant 4:00 p.m. to 12:00 a.m. shifts and 6:00 p.m. to 10:00 p.m. shifts. The claimant was not available. On November 18, 2017, the claimant stopped working for the employer. Her husband was working on call and the claimant had to watch the children.

**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".

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.

On May 11, 2017, the claimant requested to work as a part-time worker and was still working part-time for the employer through November 18, 2017. She knew the hours could vary according to the employer's needs. During her employment those circumstances did not change. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work during his employment.

The issue of the claimant's overpayment and separation from employment is remanded for determination.

**DECISION:**

The representative's November 16, 2017, decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits. The issue of the claimant's overpayment and separation from employment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs