

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAURA A WESTPHAL
Claimant

DRIVELINE RETAIL MERCHANDISING INC
Employer

APPEAL 15A-UI-01892-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/26/14
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 3, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2015. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a merchandiser beginning in April 2007 through date of hearing as she remains employed. The claimant has worked additional hours whenever work is available. The very nature of the business is that regular full time hours are not available thus employees are hired on a part-time basis. The claimant was never given a guarantee of any specific number of hours per week. The wages in the claimant's base period vary from none in one quarter to a high of \$4741. The claimant has no wages from any other employer in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 part-time employee with no guarantee of any amount of hours per week. She has never been promised full-time hours or any specific shift or work location. Under these circumstances the administrative law judge concludes that claimant is still employed under the same hours and wages as at the time of hire. Accordingly, benefits are denied.

DECISION:

The February 3, 2015 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective October 26, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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