

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANDY J HUGHES
Claimant

APPEAL NO: 14A-UI-07238-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERNATIONAL INC
Employer

OC: 05/25/14
Claimant: Respondent (1)

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 July 8, 2014, reference 01, 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 August 7, 2014. The claimant participated in the hearing. Janice Xiao, Owner, participated in the hearing on behalf of the employer with Attorney Stu Cochrane.

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 was hired as a part-time server for International Inc. in 2004 and continues to be employed in that capacity. The employer closed the restaurant the week ending June 7, 2014 for a vacation and employees did not receive any hours or wages that week.

During the last four years the claimant has volunteered to work as a cashier and has done so one to two nights per week. The employer has only scheduled her as a cashier twice since June 7, 2014. The claimant continues to act as a server during the day shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not still employed at the same hours and wages as contemplated in the original contract of hire.

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 server but has also taken on the duties of a cashier one or two nights per week during the last four years. The addition of those duties changed the claimant's original contract of hire with the employer and increased her wages as cashiers earn \$7.50 per hour and servers earn \$4.90 plus tips. At this time, there has been no separation from the claimant's part-time employment and the claimant is not currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is considered partially unemployed. Therefore, benefits are allowed effective the week ending June 7, 2014.

DECISION:

The July 8, 2014, reference 01, decision is affirmed. The claimant is not employed at the same hours and wages as in her original contract of hire and therefore is eligible for partial unemployment insurance benefits, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can