

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILL DELING**  
Claimant

**APPEAL NO: 11A-UI-02308-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 10-24-10**  
**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 17, 2011, reference 01, decision that allowed benefits to the claimant for the two weeks ending February 12, 2011. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 22, 2011. The claimant participated in the hearing. Kim Benshoff, Human Resources, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed with Fareway as a meat cutter and customer service representative in the meat department from November 4, 2010 to January 7, 2011. The claimant worked 12.5 hours the week ending November 5, 2010; she worked 21.6 hours the week ending November 13, 2010; she worked 12.2 hours the week ending November 20, 2010; she worked 17 hours the week ending November 27, 2010; she worked 16.7 hours the week ending December 4, 2010; she worked 14.8 hours the week ending December 11, 2010; she worked 13.8 hours the week ending December 18, 2010; she worked 17.3 hours the week ending December 25, 2010; she worked 2.7 hours the week ending January 1, 2011; and she worked .40 hours the week ending January 7, 2011, as her employment was terminated January 7, 2011. The employer's witness believes the significant drop in hours after the first of the year occurred because the Christmas season rush was over.

The issue of the claimant's separation is being handled in a different appeal.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is no longer still employed with the employer and during the last two weeks prior to her separation she was not working the same hours 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".

The claimant was hired as a part-time meat cutter and customer service representative for the Fareway meat department. There has been a separation from this part-time employment and that issue is being handled in another case. Prior to the claimant's separation, her hours dropped dramatically after the Christmas season. She averaged just over 15 hours per week in the eight weeks prior to the weeks ending January 1 and January 7, 2011, and 1.55 hours per week after Christmas. The claimant's hours changed dramatically the weeks ending January 1 and January 7, 2011. Consequently, the claimant is eligible for benefits for the two weeks ending January 7, 2011, due to a change in her hours.

**DECISION:**

The February 17, 2011, reference 01, decision is affirmed. The claimant was not employed at the same hours and wages during the two weeks ending January 7, 2011, as in her original contract of hire and therefore is qualified for benefits for the two-week period ending January 7, 2011.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs