

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE S CURRIE
Claimant

APPEAL NO. 16A-UI-12681-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

OC: 07/24/16
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Available and Available
Iowa Code § 96.7(2)a(2) – Charges of Employer’s Account

STATEMENT OF THE CASE:

Dianne Currie, the claimant, filed a timely appeal from a representative’s decision dated November 23, 2016, (reference 03), which denied unemployment insurance benefits, finding that the claimant was still employed at the hours and wages as in the original agreement of hire. After due notice was provided, a telephone hearing was held on December 14, 2016. The claimant participated. Although duly notified, the employer did not participate.

ISSUE:

Whether the claimant is still employed part-time at the same hours and wages as agreed at the time of hire, and whether the claimant is eligible to receive partial unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant was hired by Family Dollar Stores of Iowa Inc in February 2016 as a part-time cashier at the rate of \$8.50 per hour. The claimant was not guaranteed any minimum number of working hours each week at the time she was hired.

The claimant continues to be employed on a part-time basis by Family Dollar Stores of Iowa Inc as of the time of this hearing. Ms. Currie has not been promoted to a quasi-management position and is paid \$10.00 per hour. The claimant remains employed on a part-time basis with no guarantee as to the minimum number of hours she might be assigned each week.

At the time Ms. Currie was hired by Family Dollar Stores of Iowa Inc., she was also employed by a temporary employment service at one of the temporary employment service’s client locations.

Ms. Currie agrees that she continues to be employed on a part-time basis at the same hours and wages as agreed at the time she was hired by Family Dollar Stores of Iowa Inc. It is the claimant’s belief that she should have sufficient wage credit available to her from other full-time employment in the base period. She has sufficient unemployment insurance funds available

because of previous other full-time employment to be eligible to receive those benefits in the form of partial unemployment at this time.

REASONING AND CONCLUSIONS OF LAW:

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.

Ms. Currie, the claimant, was hired as a part-time worker and is still working as a part-time worker for this employer. She is still employed in a part-time position with no guarantee as to the minimum number of hours available each week, as was agreed at the time she was hired. Ms. Currie understood that at her time of hire, her hours depended upon the employer's needs. That has now changed. The claimant continues to be paid at the same or greater rate of pay per hour. Inasmuch as she was not guaranteed any minimum number of hours, the fact that she is working fewer hours than she would like does not render her partially unemployed. When an individual is still working a part-time job under the same terms and conditions as hired, the individual is not considered partially unemployed. See 871 IAC 24.23 (26).

The issue whether the claimant has eligibility for benefits based upon previous full-time employment within the base period is remanded to the claims bureau for investigation.

DECISION:

The representative's decisions dated November 23, 2016, (reference 03), is affirmed. The claimant is not partially unemployed within the name of the law as she is still employed by Family Dollar Stores of Iowa, Inc. in a part-time job under the same terms and conditions as when she was hired. The issue of whether the claimant has eligibility for benefits based upon previous full-time employment within the base period is remanded to the claims bureau for investigation.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs