

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MICHELLE K LOVEWATER**  
Claimant

**APPEAL NO: 19A-UI-05721-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DPM SE 14<sup>TH</sup> LLC**  
Employer

**OC: 06/23/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 16, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 9, 2019. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

**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 prep employee for DPM SE 14th (Popeyes) February 5, 2018 and continues to be employed in that capacity with no change in her hours or wages. While the claimant has gone from three days to two days per week she was never guaranteed a certain number of hours and the employer allows her to come in on her days off to gain more hours.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is 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 prep employee. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. Therefore, the claimant is disqualified from receiving benefits based on her part-time employment.

**DECISION:**

The July 16, 2019, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on her part-time employment.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn