

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOLENE PHELAN**  
Claimant

**APPEAL NO: 09A-UI-01591-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LE MARS FORD MERCURY INC**  
Employer

**OC: 12/28/08**  
**Claimant: Respondent (4)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Le Mars Ford Mercury, Inc. (employer) appealed an unemployment insurance decision dated January 26, 2009, reference 01, which held that Jolene Phelan (claimant) was eligible for unemployment insurance benefits. Due notice was issued scheduling the matter for a telephone hearing to be held February 20, 2009. Because there is no dispute of material facts and a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant has separated from her part-time employment.

**FINDINGS OF FACT:**

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant separated from Harker's Distribution, Inc., who was her full-time employer. She was subsequently hired part-time with the employer herein. The claimant continues to be employed in that same capacity with no change in her hours or wages.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

Iowa Code section 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".

871 IAC 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 temporary part-time employee. There has been no separation from her part-time employment and she is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. The claimant is disqualified from receiving benefits from her part-time employer. However, she continues to be qualified for unemployment insurance benefits based on her separation from her full-time employer, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated January 26, 2008, reference 01, is modified in favor of the appellant. There has been no separation from her part-time employment and the employer is not subject to charges. She continues to be qualified for unemployment insurance benefits based on her separation from her full-time employer, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs