

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IBTISAM Y NURAI
Claimant

APPEAL NO. 13A-UI-07840-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 05/26/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 24, 2013, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on September 18, 2013. Claimant participated with the assistance of interpreter Magdy Salama. Employer participated through Jeff Allen.

ISSUE:

Is the claimant employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a general cleaner beginning on September 17, 2007 through date of hearing as she remains employed. The claimant is working the same hours and for higher wages than at the time of her hire. Her hours of work have been reduced by another employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 is being paid the same hours and higher wages from this employer. Thus she is considered not able to and available for work from this employer. Any reduction in her wages or hours of work will be handled in cases involving those employers. Accordingly, benefits from this employer are denied.

DECISION:

The June 24, 2013, reference 02, decision is affirmed. The claimant is not able to work and available for work for any benefit charges against this employer effective May 26, 2013. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs