

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELBY MILLER

Claimant

APPEAL NO: 13A-UI-02390-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG LOTS STORES INC

Employer

OC: 01/13/13

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 February 18, 2013, 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 March 27, 2013. The claimant participated in the hearing. Jessica Zeman, Assistant Manager, participated in the hearing on behalf of the employer.

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: She was hired as a part-time cashier for Big Lots March 20, 2012, and continues to be employed in that capacity. Prior to the holiday season the claimant averaged 24 to 26 hours per week. During the holidays she averaged 33 to 36 hours per week. Following the holidays the claimant's hours were cut to 12 to 17 hours per week. She was never guaranteed a certain number of 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 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".

The claimant was hired as a part-time cashier. 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 her original contract of hire. While the claimant's hours have fluctuated, because she is a part-time employee and is not guaranteed a certain number of hours, she cannot be considered partially unemployed under the meaning of the law.

DECISION:

The February 18, 2003, reference 01, decision is affirmed. The claimant is still employed at the same hours as in her original contract of hire and therefore is not qualified for benefits based on her part-time employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css