

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY J STEWART
Claimant

APPEAL NO. 11A-UI-11224-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANJOY INC
FAIRFIELD INN**
Employer

**OC: 07/03/11
Claimant: Appellant (3)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 22, 2011, reference 01, which held claimant not eligible to receive unemployment insurance benefits finding that she did not meet the availability requirements of the law denying benefits as of July 3, 2011. After due notice, a telephone hearing was held on September 19, 2011. Claimant participated personally. The employer participated by Ms. Sharon Atterberg, General Manager.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tiffany Stewart began her employment with Fairfield Inn on June 29, 2008 and continues to be employed at the time of the hearing. Ms. Stewart was hired to work as a part-time housekeeper/laundry worker with no guarantee as to a minimum number of working hours each week.

Ms. Stewart continues to be employed on a part-time capacity working the hours that are available to her from Fairfield Inn. The claimant continues to be paid at the same or greater rate of pay per hour.

After accepting part-time employment with another company, Ms. Stewart requested that her hours at Fairfield Inn be reduced. The claimant has not requested Fairfield Inn to increase her part-time hours.

REASONING AND CONCLUSIONS OF LAW:

The question in this case is whether Ms. Stewart is eligible for partial unemployment insurance benefits based upon her employment at Fairfield Inn. She is not.

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".

The claimant bears the burden of establishing the claimant meets the availability requirements of the Iowa Employment Security Law. 871 IAC 24.22. If the evidence establishes that the individual is partially unemployed while employed at the individual's regular job or temporarily unemployed, they may not be required to meet all the availability requirements of Iowa law. An individual shall be deemed partially unemployed any week in which while employed at the individual's then regular job the individual works less than the agreed number of hours and earns less than the individual's weekly benefit amount plus \$15.00.

In this case the evidence establishes that Ms. Stewart was not guaranteed any minimum number of working hours at her employment with Fairfield Inn. She was hired part time and there was no guarantee of a minimum number of hours each or any week that she was employed by Fairfield Inn. The evidence also establishes that Ms. Stewart in the past had requested that the hours that are made available to her be reduced because she had other employment. The evidence establishes that Ms. Stewart has not requested that those part-time hours at Fairfield Inn be increased.

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.

In this case the evidence establishes the claimant is still employed at a part-time job at the same hours and wages as contemplated in the original contract of hire and that Ms. Stewart is not working on a reduced workweek basis different from the contract of hire. As such, Ms. Stewart cannot be considered partially unemployed and is not eligible to claim partial unemployment insurance benefits based on her part-time employment with Fairfield Inn. Benefits are denied as of July 3, 2011.

DECISION:

The decision dated August 22, 2011, reference 01, is affirmed as modified. Claimant is not eligible to receive partial unemployment insurance benefits from her employment with Fairfield Inn and is employed part-time at the same hours and wages as contemplated in the original contract of hire and, therefore, cannot receive unemployment insurance benefits as being partially unemployed from this employer.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs