

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELRA BRIONES

Claimant

APPEAL NO: 11A-EUCU-00599-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTERNATIVE CONTINUUM

Employer

OC: 05-22-11

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 18, 2011, 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 12, 2011. The claimant participated in the hearing. Cheryl Frank, Human Resources Corporate Trainer and Joyce Nixon, Director of Housing, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

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 personal care attendant for Alternative Continuum on May 7, 2010, and continues to be employed in that capacity with no change in her hours or wages.

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".

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 part-time personal care attendant. 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 the original contract of hire. The claimant does not meet the availability requirements of the law and therefore benefits must be denied.

DECISION:

The July 18, 2011, reference 01 decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and does not qualify for unemployment insurance benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs