

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY M PAYNE**  
Claimant

**APPEAL NO. 07A-UI-06832-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R S BACON VENEER**  
Employer

**OC: 06-17-07 R: 03**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 12, 2007, reference 01, decision that found the claimant not eligible for benefits. After due notice was issued, a hearing was held on July 30, 2007. The claimant did participate. The employer did not participate.

**ISSUE:**

Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning June 12, 2007 through July 12, 2007, when she was separated. The subject of the claimant's separation is not an issue in this proceeding, as a fact-finding interview has been scheduled for August 6, 2007.

The claimant was hired to work full time from Monday through Friday, from roughly 7:00 a.m. until 3:30 p.m. each day. The claimant was never promised or guaranteed forty hours per week. During her four weeks of employment, she never worked forty hours per week. One week was short due to the July 4th holiday, and on another occasion the claimant missed work due to transportation problems.

**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 worked roughly thirty-two hours per week during her four weeks of employment. While she was told the job was full-time, she was not guaranteed forty hours of work per week. Working roughly thirty-two hours per week is full time work. The claimant did not always work all of the hours available to her, due to her transportation problems. The claimant is employed at the same hours and wages as when hired. Accordingly, benefits are denied.

**DECISION:**

The July 12, 2007, reference 01, decision is affirmed. The claimant is not able to work and available for work effective June 17, 2007. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw