

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AISHA ELAGHA
Claimant

APPEAL NO. 13A-UI-01140-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PYRAMID HOSPITALITY TEAM LLC
Employer

OC: 12/23/12
Claimant: Respondent (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated January 25, 2013, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on February 28, 2013. The claimant participated personally. The employer participated by Amanda Opiola, corporate human resources manager. The record consists of the testimony of Aisha Elagha; the testimony of Amanda Opiola; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer manages the Hilton Garden hotel in Ames, Iowa. The claimant was hired on December 10, 2009. The claimant is still employed as a part-time room attendant. No hours are guaranteed and an employee's hours will vary based on hotel occupancy. The claimant's hourly rate has not decreased and she averages 30 hours per week.

REASONING AND CONCLUSIONS OF LAW:

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 not eligible for unemployment insurance benefits. The claimant is still working for the employer at the same hours and wages as she did when she was hired. She was never guaranteed any certain number of hours per week. It is true that number of hours may vary from week to week and that there will be times of lower occupancy. This was true when the claimant was hired. Since she is still employed part time and her wages and hours have not been reduced since the original contract of hire, she is not eligible for unemployment insurance benefits beginning December 23, 2013.

DECISION:

The unemployment insurance decision dated January 25, 2013, reference 02, is reversed. The claimant is not eligible for unemployment insurance benefits effective December 23, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs