

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA PERALES
Claimant

APPEAL NO: 11A-UI-16501-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN PHARMACY SERVICES
Employer

OC: 11-20-11
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 December 22, 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 January 26, 2012. The claimant participated in the hearing. Susie Bramer, Store Manager and Tracy Linley, Pharmacy 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: The claimant was hired as a part-time certified pharmacy technician for Walgreens October 2, 2006, and continues to be employed in that capacity. The claimant averaged 30 hours per week prior to November 20, 2011. The claimant returned to school in a different field and was required to do a weekday externship beginning the week ending November 20, 2011. The employer was required to hire an additional employee to cover the claimant's hours and when the claimant's externship ended she stated she was only available Mondays from 1:00 p.m. to 5:00 p.m. and Thursdays from 1:00 p.m. to 7:00 p.m. The employer was unable to give the claimant her previous hours or every Monday and Thursday she stated she was available after the externship without affecting other employees' set schedules. If not for the claimant's decision to return to school and participate in the required externship she would have continued to receive 30 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at a reduced number of hours due to her decision to attend school.

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 certified pharmacy technician. There has been no separation from her part-time employment and the claimant is currently working for this employer at reduced hours because she chose to return to school and participate in an externship which prevented her from working her regularly scheduled hours and unduly limited her availability, both while doing the externship and when she returned. The change in the claimant's hours is not attributable to the employer. Consequently, the claimant is disqualified from receiving benefits based on her part-time employment.

DECISION:

The December 22, 2011, reference 01, decision is affirmed. The claimant is still employed with the employer on a reduced level due to her decision to go to school and participate in an externship. Therefore she is not qualified for benefits based on her part-time employment and the employer's account is not subject to charge.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs

