

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWSON L TREBON
Claimant

APPEAL NO: 20A-UI-11249-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WIG AND PEN ANKENY LLC
Employer

OC: 04/12/20
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 1, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 26, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Brooke Ireland, Owner, participated in the hearing on behalf of the employer.

ISSUES:

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 kitchen worker for Wig and Pen Ankeny September 22, 2018, and continued to be employed in that capacity with no change in his hours or wages before his separation from this employer June 28, 2020. The claimant asked to only be scheduled weekends during the spring of 2020.

There are issues regarding the claimant's separation from this employer that have not yet been heard or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages as contemplated in the original contract of hire until his separation from this employer.

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".

Iowa Admin. Code r. 871-24.23(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 kitchen worker. There has been a separation from his part-time employment. Prior to the separation, the claimant was working for this employer at the same hours and wages as contemplated in the original contract of hire. Consequently, the claimant is disqualified from receiving benefits based on his part-time employment.


The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for an initial determination and adjudication.

DECISION:

The September 1, 2020, reference 01, decision is reversed. Prior to his separation from this employer, the claimant was employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment.

REMAND:

The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for an initial determination and adjudication.



Julie Elder
Administrative Law Judge

October 29, 2020
Decision Dated and Mailed

je/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.