

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHELSEA E VAN ROEKEL**  
Claimant

**APPEAL NO. 11A-UI-15553-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACKERMAN INVESTMENT CO**  
Employer

**OC: 10-30-11**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 30, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 4, 2012. The claimant did participate. The employer did participate through Troy Ficken, General Manager.

**ISSUE:**

Is the claimant still employed at the same hours and wages as at the original time of hire?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a front desk clerk/housekeeper part time beginning February 11, 2011 through date of hearing as she remains employed. The claimant was hired originally only to work the front desk. She also began working as a housekeeper in the spring of 2011 in order to pick up more hours of work. When she began working as a housekeeper, she was initially paid the same hourly rate as she was paid to work the front desk, \$8.50 per hour. Mr. Ficken told her that when she worked as a housekeeper she would only be paid \$7.50 per hour. Since then she has been paid the different rates of pay for housekeeping and front desk work. The claimant's wage history illustrates that she was hired part time. There is no evidence that she was ever guaranteed any particular amount of hours or that the employer was obligated to call her in to cover another employee's absence. Since filing her claim for benefits on October 30, the claimant requested fifteen workdays off for various personal reasons. She has also called in sick for herself four days, including the day of the hearing. The claimant may have a good personal reason for requesting time off, but the employer is not obligated to work around her schedule to accommodate her time off requests. The claimant's hours have not been cut from the time of her hire. Since she is working more than one position, she is working more than at the time of the original hire. The employer is not obligated to pay her the same rate of pay for every task or job classification she performs.

## 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 § 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.

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When a person is ill or requests time off, even if for a good personal reason, that renders that person not able to and available for work during that period. The claimant has not established that she was guaranteed any particular number of hours when hired. She was hired to work part time, and continues to work part time. She was told early on, in May 2011 that she would be paid a lower rate of pay for working as a housekeeper and she has continued to work at that lower rate of pay. The employer did not require her to accept housekeeping hours, she requested to do so. The employer is not obligated to provide full-time hours to an employee because they request them. Nor is the employer required to give all of the available work hours

to one employee just because that employee requests those hours. Under these circumstances the claimant is still employed at the same hours and wages as when hired. Thus, she cannot be considered able to and available for work and benefits must be denied.

**DECISION:**

The November 30, 2011, reference 01, decision is affirmed. The claimant is not able to work and available for work effective October 30, 2011. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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