

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KSEA PARKER
Claimant

APPEAL NO: 14A-UI-10827-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

FMC/MARC INC ARBIES
Employer

OC: 09/21/14
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 October 10, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on November 10, 2014. The claimant participated in the hearing. Amanda Johnson, Unit Director and David Williams, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 crew member for Arby's October 23, 2006, and continues to be employed in that capacity with no change in her hours or wages.

At the end of July 2014 the claimant transferred from one store to another. She had been getting approximately 32 hours per week at her previous store but when she began her employment at the other store the unit director told her she could not guarantee those hours. The claimant indicated she understood and did not complain about her hours. The employer scheduled the claimant 32 hours per week during her training period and while it assessed how well she fit in with the crew but her hours gradually declined due to business slowing when school started and conflicts between the claimant and at least one other back line employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 crew member. The employer never guaranteed her a certain number of hours and there has been no separation from her part-time employment. Because the claimant is currently working for this employer at the same hours and wages as contemplated in her the original contract of hire, the claimant is disqualified from receiving benefits based on her part-time employment.

DECISION:

The October 10, 2014, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her part-time employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css