

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MCKAYLA RICHARDSON
Claimant

APPEAL NO: 14A-UI-02438-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 01/12/14
Claimant: Respondent (2)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2014, reference 03, 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 March 26, 2014. The claimant did not respond to the hearing notice by providing a phone number where she could be reached at the date and time of the hearing as evidenced by the absence of her name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Ryan Schmidt, General Manager and Jill Foster, Shift Leader, 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 retail cashier for Pilot Travel Centers September 17, 2012, and continues to be employed in that capacity. The claimant is being scheduled to the same extent as she has always been with the employer but she had limited her availability. The employer has attempted to schedule her for her regular first or second shifts but the claimant has declined to accept nearly all of the offered shifts, stating she is not available when scheduled or when asked to fill in for other employees. The employer always has hours available and could provide the claimant with 20 to 25 hours per week if the claimant would accept those hours but to date the claimant has been unwilling to do so.

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 of hire.

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".

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 retail cashier. There has been no separation from her part-time employment and the employer is offering the claimant the same hours and wages as contemplated in the original contract of hire. The only change in the claimant's hours has come as a result of her unavailability for the hours offered by the employer, all of which fall under the claimant's declared availability statement. Consequently, the administrative law judge finds the claimant is disqualified from receiving benefits based on her part-time employment. The claimant is overpaid benefits in the amount of \$491.00.

DECISION:

The February 24, 2014, reference 03, decision is reversed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not eligible for unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$491.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css