

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTA M TAMBORELLO
Claimant

R & K MANAGEMENT CORP
Employer

APPEAL 14A-UI-13201-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/16/14
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the December 10, 2014 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 28, 2015. Claimant participated. Employer participated through Kevin Thei, Owner, and Krista Bricker, Store Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a sandwich artist beginning on March 27, 2014 through November 26, 2014. There has been no determination made by the Claims Section on the claimant's separation from her employment.

The claimant filed a claim for benefits with an effective date of November 16, 2014. Her separation from employment was on November 26, 2014.

The claimant was hired to work as a sandwich artist and then promoted to an assistant manager from May 1 to October 8; until she chose to step down as the assistant manager and return to her position as a sandwich artist. As a sandwich artist she was not guaranteed any specific number of hours per week. The claimant did not even work all of the hours she was scheduled to work during the week of October 8. She had been scheduled to work 37 hours but chose only to work 21 hours. The only employee in the store that is ever guaranteed full-time hours is the store manager, a position the claimant never held. During November the claimant gave the employer information that she was reducing the number of hours she was available to work.

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 effective November 16, 2014.

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".

Iowa Admin. Code r. 871-24.23(16) and (26) 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.

(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 not guaranteed any particular number of hours when she was hired. She herself chose to limit her hours by not working all of the hours she was scheduled and by limiting the hours she was available to work for the employer. Accordingly, benefits are denied effective November 16, 2014.

DECISION:

The December 10, 2014 (reference 03) decision is reversed. The claimant is not able to work and available for work effective November 16, 2014. Benefits are denied.

REMAND:

The claimant's separation from employment is remand to the UISC for an initial fact-finding and determination which shall give both parties appeal rights.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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