

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA PETERSON
Claimant

APPEAL NO: 10A-UI-17502-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MYSTIQUE CASINO
Employer

OC: 10-31-10
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 December 16, 2010, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 4, 2011. The claimant participated in the hearing. Tammy Schnee, Human Resources Generalist, 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 host cashier for Mystique Casino from September 10, 1999, and continues to be employed in that capacity with no change in her hours or wages. In November 2009 the claimant's hours dropped from 32-36 hours per week to 21-22 hours per week. As a part-time employee the claimant was not guaranteed a certain number of hours per week. During the two-week pay period ending January 14, 2010, the claimant worked 46.25 hours; during the two-week pay period ending January 28, 2010, the claimant worked 42.75 hours; during the two-week pay period ending February 11, 2010, the claimant worked 43.75 hours; during the two-week pay period ending February 25, 2010, the claimant worked 43.75 hours; during the two-week pay period ending March 11, 2010, the claimant worked 49.25 hours; during the two-week pay period ending March 25, 2010, the claimant worked 44.50 hours; during the two-week pay period ending April 8, 2010, the claimant worked 42.25 hours; during the two-week pay period ending April 22, 2010, the claimant worked 49.00 hours; during the two-week pay period ending May 6, 2010, the claimant worked 44.00 hours; during the two-week pay period ending May 20, 2010, the claimant worked 47.25 hours; during the two-week pay period ending June 3, 2010, the claimant worked 42.75 hours; during the two-week pay period ending June 17, 2010, the claimant worked 42.00 hours; during the two-week pay period ending July 1, 2010, the claimant worked

48.50 hours; during the two-week pay period ending July 15, 2010, the claimant worked 43.00 hours; during the two-week pay period ending July 29, 2010, the claimant worked 43.25 hours; during the two-week pay period ending August 12, 2010, the claimant worked 44.00 hours; during the two-week pay period ending August 26, 2010, the claimant worked 44.00 hours; during the two-week pay period ending September 9, 2010, the claimant worked 43.50 hours; during the two-week pay period ending September 23, 2010, the claimant worked 44.75 hours; during the two-week pay period ending October 7, 2010, the claimant worked 43.75 hours; during the two-week pay period ending October 21, 2010, the claimant worked 41.25 hours; during the two-week pay period ending November 4, 2010, the claimant worked 44.00 hours; during the two-week pay period ending November 18, 2010, the claimant worked 43.50 hours; during the two-week pay period ending December 2, 2010, the claimant worked 45.75 hours; during the two-week pay period ending December 16, 2010, the claimant worked 65.25 hours; during the two-week pay period ending December 30, 2010, the claimant worked 62.25 hours; during the two-week pay period ending January 13, 2011, the claimant worked 61.25 hours; during the two-week pay period ending January 27, 2011, the claimant worked 48.25 hours; during the two-week pay period ending February 10, 2011, the claimant worked 48.75 hours; and during the two-week pay period ending February 10, 2011, the claimant worked 49.00 hours.

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 § 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 host cashier. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her part-time employment.

DECISION:

The December 16, 2010, 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/pjs