

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESA VENEM
Claimant

APPEAL NO. 09A-UI-18970-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**Original Claim: 07/05/09
Claimant: Respondent (4)**

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Fareway Stores, Inc. (employer) appealed an unemployment insurance decision dated December 8, 2009, reference 01, which held that Lesa Venem (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled to be held on January 29, 2010. A hearing was deemed not necessary as there was no dispute of material facts. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant previously separated from Winnebago Industries and was receiving benefits based on the separation from her full-time employment. She was hired by the employer on a part-time basis on August 31, 2009 and continues to be employed in that same capacity. There has been no separation from her part-time employer.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for 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 part-time and is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. The claimant is disqualified from receiving benefits from this employer and the employer's account is not subject to charge. However, the claimant remains qualified from her separation from her full-time employer.

DECISION:

The unemployment insurance decision dated December 8, 2009, reference 01, is modified in favor of the appellant. The employer's account is not subject to charge, since the claimant has not separated from her part-time employer. The claimant continues to qualify for unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw