

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TWILA ALBERS
Claimant

APPEAL NO: 12A-UI-01881-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 01/15/12
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 February 21, 2012, reference 01, which held that Twila Albers (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2012. The claimant participated in the hearing. The employer participated through Manager John Curry and Human Resources Generalist Theresa McLaughlin. Based on the evidence, the arguments of the parties, 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 heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time cashier on March 1, 2011 with no guarantee of hours. She continues to work in that same capacity with no changes to her hours or wages. The claimant separated from her full-time employer, Albers Enterprises, LLC, and received benefits based on that separation.

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 as a part-time 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 her original contract of hire. The claimant is disqualified from receiving benefits from this employer and its account is not subject to charge. However, the claimant appears to be eligible for benefits based on her separation from her full-time employer.

DECISION:

The unemployment insurance decision dated February 21, 2012, reference 01, is modified in favor of the appellant. The claimant continues to be employed part-time in the same hours and wages as contemplated in the original agreement of hire. Partial unemployment insurance benefits are denied as of January 15, 2012 and the employer's account is not subject to charge. The claimant qualifies for benefits based on her separation from her full-time employer, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw