

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCIA CASTILLO-MAR
Claimant

APPEAL NO: 13A-UI-06007-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBOCS INC
CRACKER BARREL OLD COUNTRY
STORE
Employer

OC: 04/14/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Marcia Castillo-Mar (claimant) appealed an unemployment insurance decision dated May 16, 2013, reference 02, which held that she was not eligible for unemployment insurance benefits because she is working the same hours and wages with CBOCS, Inc. (employer) as in her original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2013. The claimant participated in the hearing. The employer participated through Scott Miller.

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 considered all of the evidence in the record, finds that: The claimant was hired as a part-time seasonal employee on July 16, 2012 with no guarantee of hours. At the end of December 2012, the employer moved her into a permanent part-time position with no guarantee of hours. The claimant continues to be employed in that same capacity.

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.

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Although the claimant's status has changed from seasonal to permanent, her part-time hours have not changed. There has been no separation from her employment and benefits are denied.

DECISION:

The unemployment insurance decision dated May 16, 2013, reference 02, is affirmed. The claimant continues to be employed part-time in the same hours and wages as contemplated in the original agreement of hire. Benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs