

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARNA R JUSTMAN**  
Claimant

**APPEAL NO. 12A-UI-05263-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PJ IOWA LC**  
Employer

**OC: 03/18/12**  
**Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

PJ Iowa LC filed a timely appeal from a representative's decision dated May 1, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 30, 2012. Although duly notified, the claimant did not participate. The employer participated by Mr. J.P. Owen, area manager.

**ISSUE:**

At issue is whether the claimant is still employed part-time at the same hours and wages as in the original agreement of hire.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Marna Justman began employment with PJ Iowa LC on November 15, 2011, and continues to be employed at the time of hearing. Ms. Justman was hired as a part-time concession worker for PJ Iowa LC working at the Wells Fargo Arena in Des Moines, Iowa. The claimant was hired with no guarantee of minimum number of working hours each week. The claimant was to be paid by the hour and continues to be paid at the same rate of pay that she was hired for. The claimant has not been available to take all the hours offered by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes Ms. Justman is still employed in a part-time, on-call job at the same hours and wages as contemplated in the original agreement of hire. It does.

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.

Iowa Code section 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".

The evidence in the record establishes that Ms. Justman was hired as a part-time, on-call worker with no guarantee as to the minimum number of hours she would be assigned each week. The claimant was also hired to be paid by the hour and continues to be paid at the same rate of pay that she was hired for. As a part-time, on-call employee, the claimant's hours of work have fluctuated due to the business needs of the employer and because of the availability of Ms. Justman to accept more hours, at times. The claimant continues to be employed part-time working with no guarantee of minimum hours and is paid at the same rate of pay as agreed upon at the time of hire.

For the above-stated reasons, the administrative law judge concludes the claimant cannot be considered to be partially unemployed, as she is still employed part-time at the same hours and wages as contemplated in the original agreement of hire. There was no guarantee as to the minimum number of hours the claimant would be assigned each week and there has been no change in the agreement of hire. The claimant's reduced working hours are therefore no different than agreed upon by the parties. Benefits are denied of as March 18, 2012.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated May 1, 2012, reference 02, is reversed. The claimant cannot be considered to be partially unemployed. Benefits are denied effective March 18, 2012, as the claimant is still employed part-time at the same hours and wages as agreed upon at the time of hire. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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