

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKSON H JONES
Claimant

APPEAL NO: 20A-UI-11256-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WIG AND PEN ANKENY LLC
Employer

OC: 03/29/20
Claimant: Respondent (2)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 1, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 26, 2020. The claimant participated in the hearing. Brooke Ireland, Owner, participated in the hearing on behalf of the employer.

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 bartender/server for Wig and Pen Ankeny September 7, 2018, and continues to be employed in that capacity with no change in his hours or wages. Between the week ending April 4 and the week ending May 23, 2020, the claimant did not get as many hours as he usually worked due to the fact the employer's business was impacted by Covid-19 but as a part-time employee the claimant was not guaranteed a certain number of hours and he is not considered partially unemployed.

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 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".

Iowa Admin. Code r. 871-24.23(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 bartender/server. There has been no separation from his 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 his part-time employment.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he is eligible for such compensation for the week claimed. The claimant does not have to be able and available for work to be eligible for the federal unemployment programs. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The September 1, 2020, reference 01, decision is reversed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment.



Julie Elder
Administrative Law Judge

October 29, 2020
Decision Dated and Mailed

je/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.