

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA FANGMANN
Claimant

APPEAL NO. 12A-UI-01582-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A&J ENTERPRISES INC
Employer

OC: 01/22/12
Claimant: Respondent (2-R)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, A&J Enterprises, filed an appeal from a decision dated February 7, 2012, reference 01. The decision allowed benefits to the claimant, Lisa Fangmann. After due notice was issued a hearing was held by telephone conference call on March 5, 2012. The claimant participated on her own behalf and with Danny Lansing. The employer participated by District Manager Cassandra Byrd.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Lisa Fangmann began employment with A&J Enterprises July 11, 2000, as a part-time kitchen employee. She went to full-time in 2002. In the summer of 2011 the owners of the company found the store in disarray and many employees were terminated as a result. Ms. Fangmann was retained and the employer reduced her to part-time in October 2011. She agreed to accept the change although there was no guarantee of a minimum number of hours per day, week or pay period.

The employer assigned Ms. Fangmann to various jobs trying to find some duties in keeping with her skill set. Finally, in January 2012, she was assigned to “outside work” such as window washing, parking lot clean up and other general chores. This job also did not have a guarantee of hours and it was on an “as needed” basis, which Ms. Fangmann had been told at the time of the change and which she accepted.

Lisa Fangmann has received unemployment benefits since filing a claim with an effective date of January 22, 2012.

REASONING AND CONCLUSIONS OF LAW:

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's contract of hire changed in October 2011 from full-time to part-time without any guarantee of hours. She understood her hours would depend solely on the needs of the employer without any guarantee of a minimum number of hours being scheduled. She continues in that capacity as of the present time. Under the provisions of the above Administrative Code section, she is not considered to be able and available for work. She is ineligible for benefits.

Iowa Code § 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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 7, 2012, reference 01, is reversed. Lisa Fangmann is not able and available for work and benefits are denied.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs