

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NEKEYA L BRYANT**  
Claimant

**APPEAL NO. 10A-UI-06960-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE ARC OF JOHNSON COUNTY**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 6, 2010, reference 01, decision that allowed benefits under a theory of partial unemployment. After due notice was issued, a hearing was held on June 30, 2010. Claimant Nekeya Bryant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Bill Reagan, President and Chief Executive Officer, represented the employer.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

Whether the claimant was partially unemployed from his/her employment.

Whether the employer's account may be assessed for benefits paid to the claimant.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Nekeya Bryant has been employed by ARC of Johnson County as a part-time direct care professional since December 2008 and continues in the position at this time. Ms. Bryant's immediate supervisor is Karen DeGroot, Vice President of Operations. Ms. Bryant decides when she wants to work and how many hours she wants to work. During any given week, the employer has 30-35 hours of work available for Ms. Bryant if she wants to work them. The employer has made no change in the hours of employment it has available for Ms. Bryant or the wage it pays Ms. Bryant.

## REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

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).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence indicates that there has been no change in the available work or wage and the employer continues to offer the same conditions of employment as existed during Ms. Bryant's base period. Ms. Bryant cannot be considered partially unemployed. Benefits are denied effective April 4, 2010. The employer's account will not be charged for benefits so long as Ms. Bryant continues in the employment under the same conditions. In the event Ms. Bryant separates from the employment, the employer should notice Workforce Development so that the effect of the separation on Ms. Bryant's eligibility for benefits and the employer's liability for benefits may be adjudicated.

Ms. Bryant did not appear for the hearing and thereby failed to present any evidence to indicate she is partially unemployed from The ARC of Johnson County or that she has met the work availability requirements of Iowa Code section 96.4(3) since she established the new claim for benefits that was effective April 4, 2010. The weight of the evidence indicates that Ms. Bryant has not made herself available for work the employer has available for her and cannot be deemed available for work within the meaning of the law.

This matter will be remanded to the Claims Division for entry of an appropriate overpayment decision in light of the present decision.

**DECISION:**

The Agency representative's May 6, 2010, reference 01, decision is reversed. The claimant has not been partially unemployed from The ARC of Johnson County since she established her claim for benefits. Benefits are denied effective April 4, 2010. The disqualification continues at this time. The employer's account will not be charged for benefits so long as the claimant continues in the employment under the same conditions. In the event the claimant separates from the employment, the employer should notice Workforce Development so that the effect of the separation on the claimant's eligibility for benefits and the employer's liability for benefits may be adjudicated. Claimant has also not met the work availability requirements of Iowa Code section 96.4(3) since she established the new claim for benefits.

This matter is remanded to the Claims Division for entry of an appropriate overpayment decision in light of the present decision. The overpayment would be for the period beginning April 4, 2010 and would include benefits disbursed through the week that ended June 26, 2010.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs