

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NORENE E PITTMAN**  
Claimant

**APPEAL NO. 10A-UI-02781-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPURGEON MANOR INC**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.19(38)(b) – Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 11, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2010. Employer participated by Tracy Wright, business office manager; John Doerr, Dietary Manager; and Valerie Rahe, Activities Director. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Tracy Wright; the testimony of John Doerr; and the testimony of Valerie Rahe.

**ISSUE:**

Whether the claimant is entitled to receive partial unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant is a nursing home facility located in Dallas Center, Iowa. The claimant was hired on June 1, 1989, as a part-time dietary aide. In September 2009, the claimant asked to go to PRN status. She told her employer she wanted the flexibility to work when she wanted to work as opposed to having a strict schedule. The employer honored her request. The claimant is still employed on a PRN basis with the employer.

**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).

The claimant did not participate in the hearing and failed to present any evidence to support her claim for benefits. The testimony from the employer established that the claimant requested in September 2009 to go to PRN status and is still employed by the employer. She is employed at the same hours and wages as she was when she went on PRN status in September 2009. Benefits are denied.

**DECISION:**

The decision of the representative dated February 11, 2010, reference 01, is affirmed. The claimant is not eligible for unemployment insurance benefits.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css