

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHA R MARTIN
Claimant

APPEAL NO. 09A-UI-15718-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON MEMORIAL HOSP
Employer

OC: 09/06/09
Claimant: Respondent (1)

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

Jennie Edmundson Memorial Hospital filed a timely appeal from a representative's decision dated October 13, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 19, 2009. The claimant participated personally. The employer participated by Kathey Heuwinkle, Benefit Specialist and Mary Coburn, Unit Director. Employer's Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant is eligible for partial benefits as a part-time employee not performing services in the same pattern of employment as in the base period.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Martha Martin began employment with Jennie Edmundson Memorial Hospital on February 13, 2006 and holds the position of part-time unit secretary at the rate of \$13.32 per hour. At the time of hire it was agreed that the claimant would be assigned to work 16 hours per week and would be paid by the hour. Under the agreement of hire the claimant is at times, paid at the rate of \$2.50 per hour when she is placed on "on-call status" because less than 16 hours per week of work is available to the claimant due to patient census.

Ms. Martin filed a claim for unemployment insurance benefits effective September 6, 2009 based upon her reduced working hours. Ms. Martin reports her earnings each week that she claims benefits and is aware that she cannot claim benefits for days that she chooses voluntarily to not be available for work or that she is ill.

It is the employer's position that if the claimant is placed on on-call status she could contact her unit supervisor to determine if similar work is available to her at any other unit. The claimant

was not aware that she was required to contact any other supervisor for additional work if she was called off work by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is able and available for work.

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".

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 evidence in the record establishes that at the time of hire it was agreed that the claimant would be working 16 hours per week and would receive hourly pay. When less than 16 hours of work per week is available in the claimant's unit the claimant is called by the employer and informed not to report and is placed on "on-call status." In most cases when placed on on-call status the claimant is paid at the reduced rate of hourly pay being paid \$2.50 per hour instead of the \$13.32 per hour she normally receives. As the evidence in the record establishes that the claimant at times is working on a reduced workweek basis that is different from the agreement of hire, the claimant is partially unemployed those weeks and potentially eligible to receive unemployment insurance benefits providing that she actively reports all remuneration provided to her for each week that she claims benefits. The claimant is not eligible to receive unemployment insurance benefits for hours that she has taken vacation time, called in sick or otherwise made herself unavailable for work with Jennie Edmundson Memorial Hospital. The claimant was unaware that she had the right or obligation to contact the employer to seek additional hours if the employer had called her and told her that no work was available on any particular working day. Ms. Martin is aware as of the date of hearing that additional hours may be available to her in that manner. The employer also has the option of protesting benefits for any week that benefits are claimed when the employer reasonably believes that working hours and pay equal to the 16 hours agreed upon at the time of hire is available but not being accepted by the claimant. Partial unemployment insurance benefits are available to the claimant providing that she meets the requirements for weekly eligibility.

DECISION:

The representative's decision dated October 13, 2009, reference 01, is affirmed. The claimant is able and available for work. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law each week that she claims benefits.

Terence P Nice
Administrative Law Judge

Decision Dated and Mailed

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