

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA ROBINSON
Claimant

APPEAL NO: 11A-UI-02017-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBS STAFFING LLC
Employer

OC: 10/17/10
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Gloria Robinson (claimant) appealed an unemployment insurance decision dated February 17, 2011, reference 06, which held that she was not eligible for unemployment insurance benefits because she was still employed with CBS Staffing, LLC (employer) in the same capacity as in her original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2011. The claimant participated in the hearing. The employer participated through owner Brad Ortmeier. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant previously worked for the employer in 2008. She was rehired on November 18, 2010 as an on-call licensed practical nurse. There was no guarantee of hours. The claimant was still employed in the same capacity until today's hearing when she announced she was no longer employed with this employer.

The separation issues were not included in the notice of hearing so the case is remanded for an initial fact-finding interview on those issues. Additionally, the employer reported the claimant earned \$413.98 for the week ending January 14, 2011 and \$75.95 for the week ending February 17, 2011 but these wages were not reported. The case will be remanded for further determination on whether the claimant had earned but unreported wages.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

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 24.22(2)i(1) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

871 IAC 24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code § 96.19(9)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The claimant was hired as an on-call licensed practical nurse with no guarantee of hours. Prior to the hearing today, there had been no separation from her employment and she was working for this employer at the same hours and wages as contemplated in her original contract of hire.

Consequently, the claimant does not meet the availability requirements of the law and benefits are denied.

The separation and unreported wages issues were not included in the Notice of hearing for this case, and the case will be remanded for an investigation and determination on those issues. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated February 17, 2011, reference 06, is affirmed. The claimant does not qualify for unemployment insurance benefits. This case is remanded for further determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs