

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VINA EARLES

Claimant

APPEAL NO: 09A-UI-02397-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILDSERVE COMMUNITY OPTIONS INC

Employer

OC: 12/28/08

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Vina Earles (claimant) appealed an unemployment insurance decision dated February 5, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was still working at the same hours and wages with ChildServe Community Options, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2009. The claimant participated in the hearing. The employer participated through Stephanie Martindale and Katie Ceollia. 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 at the same hours and wages.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time licensed practical nurse on January 31, 2001 and worked in the continuous care unit through February 2006 when she sustained a work-related injury. She was off work for approximately five weeks and then returned to work on a part-time basis with restrictions. The claimant never returned to full-time status and began working in the employer's respite department. She sustained an additional work-related injury in February 2007. Treatment continued until she finally had a total knee replacement. She was released without restrictions in approximately October 2008 or November 2008. The claimant continues to work in a part-time, per diem capacity which began back in 2006. She is available to work full-time but has not found another full-time position with the employer.

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 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.

Although the claimant was hired full-time, she has been working in a part-time capacity since approximately March 2006. A full-time week is the number of hours or days per week currently established by schedule, custom or otherwise. 871 IAC 24.1(135)(c). The claimant continues to work at the same hours and wages as she has been working for approximately three years. There has been no change and/or separation from her part-time employment and she is disqualified from receiving benefits from this employer.

DECISION:

The unemployment insurance decision dated February 5, 2009, reference 01, is affirmed. The claimant does not meet the availability requirements of the law as she is still working on a part-time basis with no change in hours or wages.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs