

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELYN N SWIM
Claimant

APPEAL NO: 12A-UI-05219-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 04/01/12

Claimant: Appellant (1)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jacquelyn N. Swim (claimant) appealed a representative's April 25, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Central Iowa Hospital Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2012. The claimant participated in the hearing. Ashley Wirtjes appeared on the employer's behalf. 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:

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 17, 2007. She originally worked full-time as a patient care technician on a floor of the employer's facility. In 2010 she determined to return to school for, first, a licensed practical nurse (LPN) degree, and then a registered nurse (RN) degree. As she could not balance continuing to work full-time with being a full-time student, she sought a part-time position with the employer; as of May 26, 2010, she became a part-time care technician in the employer's clinical staffing office. In her part-time position, she is scheduled for a base schedule of approximately 16 hours per week. The claimant would seek additional work on a day-to-day basis as she was available.

The claimant's hourly wage since January 4, 2012 has been \$14.61; her prior hourly wage since October 2010 had been \$14.42. In 2011 she was working a base schedule of between 16 and 20 hours per week, but, by seeking additional work on a day-to-day basis, she averaged between 22.5 (first quarter 2011) and 33 (fourth quarter 2011) hours per week.

Since early April 2012, the claimant's base schedule has been 20 hours per week, but when her new school term starts, it will return to 16 hours per week. Since early April 2012, with picking up additional hours, the claimant's actual hours worked have ranged from about 30 hours per week to about 26 hours per week. However, as the claimant's next term approaches, she will have fewer hours she will be able to work beyond her 16 hour base. The claimant established an unemployment insurance benefit year effective April 1, 2012 seeking partial unemployment insurance benefits. Her weekly benefit amount was calculated to be \$281.00. To date, the claimant has had four weeks for which her earned wages were less than \$296.00 (\$281.00 + \$15.00), but her wages for those weeks were \$292.00, \$293.00, \$293.00, and \$294.00, respectively.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b. The comparison as to what is "usual" is made against what has been established as the claimant's normal pattern of employment; the Agency has defined a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). Under 871 IAC 24.1(135)(c), "full-time week" is defined as "the number of hours or days per week of full-time work currently established by schedule, custom or otherwise for the kind of service an individual performs for an employing unit."

In the present case, for the benefit year beginning April 1, 2012, the claimant's "regular workweek" must be based upon her status as of the point she filed his claim for her current year. The evidence indicates that at that point, the claimant's agreement with the employer was to work 16 to 20 hours per week, and then work additional hours as she might be available and as the employer might have need. She had worked on this basis since May 2010, thus becoming her current "contract of hire" – the terms of employment agreed to between an employee and an employer, either explicitly or implicitly. This establishes the claimant's "regular workweek" for the current benefit year for determining whether she was partially unemployed under the statutes and rules.

The claimant's employment level with the employer has not decreased. The employer has been providing the claimant with substantially the same base schedule of 16 to 20 hours per week as it provided during her base period. Further, the claimant is typically earning near or more than the \$296.00 partial benefit earning threshold applicable to her current benefit year. Iowa Code § 96.3-3. Consequently, the claimant is not qualified to receive partial unemployment insurance benefits.

Further, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's ability to pick up additional hours beyond her base schedule is reduced is because she is not able and available to work the additional hours due to her increased schooling obligation. Thus she is ineligible for unemployment insurance benefits for this period. 871 IAC 24.23(29).

DECISION:

The unemployment insurance decision dated April 25, 2012 (reference 01) is affirmed. The claimant is currently not eligible for partial unemployment insurance benefits in her benefit year effective April 1, 2012.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw