

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTAL P NEWSOME
Claimant

APPEAL NO. 09A-UI-18529-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
LABOR WORLD IA
Employer

OC: 02/08/09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Still Employment at Same Hours and Wages

STATEMENT OF THE CASE:

Kristal Newsome filed a timely appeal from a representative's decision dated December 11, 2009, reference 04, which denied unemployment insurance benefits as of November 8, 2009 upon a finding that the claimant could not be considered to be partially unemployed as she was still employed for the same hours and wages as agreed in her original contract of hire. After due notice, a telephone conference hearing was scheduled for and held on January 21, 2010. Ms. Newsome participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

At issue in this matter is whether the claimant is still employed at the same hours and wages as contemplated in the original agreement of hire.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kristal Newsome accepted part-time employment with USA Staffing on September 28, 2009. Ms. Newsome agreed to work 20 to 35 hours per week assigned to data entry and other duties at USA Staffing's client employer, Iowa Workforce Development. Ms. Newsome agreed to the hourly paid offered by USA Staffing. The claimant continues to be employed on a part-time basis for USA Staffing under the long-term assignment with Iowa Workforce Development working 20 or more hours per week and being paid by the hour as agreed upon at the time of hire.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Kristal Newsome continues to be employed part time working the same hours and wages as agreed upon in the original agreement of hire. It does.

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 Kristal Newsome is still employed in a part-time job with USA Staffing working the same hours and wages as contemplated in the original agreement of hire between Ms. Newsome and USA Staffing. The evidence in the record establishes the claimant is not working on a reduced workweek basis different from the agreement of hire.

Based upon the above-stated facts and the application of the law, the administrative law judge concludes that the claimant is not eligible for partial unemployment insurance benefits as she is not working less than the number of hours agreed at the time of hire and continues to receive the same hourly wage agreed upon at the time of hire. Benefits are denied as of November 8, 2009.

DECISION:

The representative's decision dated December 11, 2009, reference 04, is affirmed. The claimant cannot be considered to be partially unemployed as she continues to work the same hours and wages agreed on in the original contract of hire. Benefits are denied as of November 8, 2009.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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