

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN M STOREY
Claimant

APPEAL NO. 08A-UI-05978-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETHANY MANOR INC
Employer

OC: 05/18/08 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Megan Storey filed an appeal from a representative's decision dated June 18, 2008, reference 01, which denied benefits as of May 18, 2008 finding that the claimant was not partially unemployed as she was still employed in the same hours and wages. After due notice was issued, a telephone conference hearing was scheduled for and held on July 15, 2008. Ms. Storey participated personally. The employer participated by Dale Ullestad-Heneke, Administrator, and Lisa Lowe, Dietary Manager.

ISSUE:

The issue in this matter is whether the claimant is able and available for work and whether the claimant is employed in 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: The claimant last worked for this employer in March 2008. Ms. Storey was most recently employed as a part-time on-call dietary aide and was paid by the hour. Her immediate supervisor was Lisa Lowe.

Ms. Storey was initially employed on a full-time basis but subsequently unilaterally chose to change her employment to part-time status. Subsequently the claimant indicated to the employer that she wished to work only on a "on-call" status because of other employment. The employer calls Ms. Storey when work is available. The claimant has often declined work assignments for unspecified reasons although laid off from other employment during the summer months.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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 Ms. Storey is employed in a part-time capacity at the same hours and wages contemplated in the contract for employment initiated and agreed upon by Ms. Storey with Bethany Manor. The claimant had unilaterally requested a change from full-time employment to part-time employment and subsequently to a "on-call" status because of other employment. The evidence in the record establishes that the claimant continues in this employment relationship at the time of hearing and that the claimant has declined offers of work on weekends although she is on temporary layoff from another employer.

For these reasons the administrative law judge concludes that the claimant is not eligible to receive unemployment insurance benefits as of May 18, 2008.

DECISION:

The representative's decision dated June 18, 2008, reference 01, is hereby affirmed. Benefits are denied. The claimant is employed at the same hours and wages in her agreement for employment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs