

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY C PORTER

Claimant

APPEAL NO: 14A-UI-00020-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC

Employer

OC: 12/01/13

Claimant: Appellant (2)

871 IAC 24.23(26 96.4(3) – Working Same Hours and Wages – Not Unemployed
Iowa Code § 96.19(38)b – Partially Unemployed

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 24, 2013 determination (reference 01) that held her ineligible to receive benefits as of December 1, 2013, because she was not considered unemployed. The claimant participated in the January 23 hearing. Kathryn Uhlig, the area general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits as of December 1, 2013.

ISSUES:

Is the claimant partially unemployed?

As of December 1, 2013, was the claimant working the same hours she was hired to work or was she working a reduced workweek?

FINDINGS OF FACT:

The claimant was working for the employer when Uhlig started in December 2012. The claimant has worked at four locations for the employer. Prior to December 2013, the claimant worked an average of 20 hours a week.

In August 2013, Uhlig asked the claimant to work at a Waukee location because this store did not have enough employees. The claimant agreed to work at the Waukee store and worked 25 to 39 hours at this location.

The Waukee location hired new employees and became fully staffed. In late November 2013 the claimant was not scheduled to work at the Waukee location. The claimant did not understand why, but learned the Norwalk location needed employees. The claimant talked to the Norwalk manager when she was not scheduled to work in Waukee. The claimant understood she could work at least 15 hours a week at the Norwalk location because an employee had quit or was going to quit. The claimant understood she could work more than 15 hours if she worked as a delivery driver.

When the claimant started at the Norwalk location, the employee who planned to leave did not. As a result of this employee continuing her employment, the claimant was not scheduled to work 15 hours a week.

The claimant established a claim for benefits during the week of December 1, 2013. Her average weekly wage during her base period is \$169.00. The claimant filed the following weekly claims.

Week ending	Wages Reported
12/07/13	\$41
12/14/13	00
12/21/13	14
12/28/13	29
01/04/14	71
01/11/14	94

REASONING AND CONCLUSIONS OF LAW:

When 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 a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). The evidence in this case shows the claimant worked reduced hours when she established her claim for benefits.

The claimant did not talk to a Norwalk manager until she was not scheduled to work at the Waukee location. When the claimant agreed to work at the Norwalk location, she understood she would be working a minimum of 15 hours a week and could work more if she could make deliveries. The employee the claimant was going to replace decided to continue her employment and was allowed to do this. This meant the Norwalk location did not have the hours the claimant agreed to work and she worked reduced hours. As a result, she was partially unemployed, Iowa Code § 96.19(38)b, and is eligible to receive benefits as of December 1, 2013. The employer's account is subject to charge because the claimant's hours were reduced.

DECISION:

The representative's December 24, 2013 determination (reference 01) is reversed. The claimant became partially unemployed when she was not scheduled to work at the Waukee location and was not scheduled as many hours at the Norwalk location when the employee she was replacing decided to continue her employment. As of December 1, the claimant is eligible to receive benefits because she worked a reduced work week, less than her average weekly benefit amount. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css