

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARISSA B KELLY

Claimant

APPEAL NO. 13A-UI-09234-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 07/14/13

Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from the representative's decision dated August 9, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning July 14, 2013, finding that the claimant was still employed part time or working on call when work was available. After due notice was provided, a telephone hearing was held on September 16, 2013. The claimant participated. The employer participated by Mr. Michael Payne, Risk Manager. Employer's Exhibit A was received into evidence.

ISSUE:

At issue in this matter is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: That the claimant began employment with Advance Services, Inc. on October 10, 2005 and was assigned to work at the Sygenta Company on a long-term assignment. At the time of hire it was agreed that Ms. Kelly would be assigned to work 40 hours per week. Ms. Kelly worked 40 hours per week for the first nine months of her long-term assignment. After that date, the claimant's working hours became variable. During the claimant's base period Ms. Kelly worked a minimum of 20 hours of work per week and reasonably considered 20 hours per week to be her current minimum number of working hours guaranteed in the employment based upon her recent years of employment. When Ms. Kelly's work hours dropped below 20 hours for the week of July 14, 2013, she filed a claim for partial unemployment insurance benefits.

It is the employer's position that Ms. Kelly should not be eligible for partial unemployment insurance benefits because she could seek full-time work with a different employer.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case the claimant was initially hired to work full time but later her employment was changed to part time, a minimum of 20 working hours per week during the base period. The evidence establishes that Ms. Kelly opened a claim for unemployment insurance benefits for the week of July 14, 2013 when her work hours dropped below the 20 hours per week established as her minimum working hours per week during the base period. Because the claimant is working on a reduced workweek basis different from that in her base period, the claimant is partially unemployed and eligible to receive partial unemployment insurance benefits providing that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 9, 2013, reference 01, that held claimant eligible to receive partial unemployment benefits beginning July 14, 2013 is affirmed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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