

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATI J BUCHHOLZ
Claimant

APPEAL NO. 14A-UI-09003-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RGIS LLC
Employer

OC: 02/16/14
Claimant: Appellant (1)

Iowa Code § 96.19-38-a & b – Total and Partial Unemployment
Iowa Code § 96.7-2-a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 21, 2014, reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 16, 2014. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

FINDINGS OF FACT:

The claimant currently works for RGIS, a base-period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant has no other wages in the base-period history. Claimant's hours for employer have changed during various times of the year and have changed based on the vendors for which claimant has worked. Recently the contract with a vendor has expired which has reduced the number of hours claimant is able to work.

Throughout this time, claimant has remained able and available to work and has called in to employer in an attempt to secure more hours. As employer was transitioning from one vendor and onto new vendors, claimant's hours have been temporarily reduced. Although claimant has remained part time throughout this period, claimant had until recently been getting more consistent hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code § 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".

Iowa Code § 96.3-6 provides:

6. Part-time workers.

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

Iowa Admin. Code r. 871-24.22(2)f provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Because the claimant has no other base-period wages and is currently employed part time, claimant is not considered partially unemployed. Benefits are denied. Employer has not changed the arrangement under which claimant was hired. As such, the Administrative Law Judge must look at this situation as claimant being offered the same hours as intended in the conditions for the original hire. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

DECISION:

The August 21, 2014, reference 03, decision is affirmed. The claimant is not partially unemployed and, as such, benefits are denied. The account of the current part-time employer shall not be charged.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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