

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSIE J STIENEKE
Claimant

APPEAL NO. 09A-UI-09496-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 05/03/09
Claimant: Appellant (1)**

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 24, 2009, reference 05, which held her not eligible to receive unemployment insurance benefits, finding the claimant was still employed in the same capacity as in the original contract of hire and denying benefits effective May 21, 2009. After due notice was issued, a telephone conference hearing was scheduled for and held on July 20, 2009. The claimant participated personally. The employer participated by Josh Burrows, hearing representative, and witnesses Dani Friedrichsen and Denise Petty.

ISSUE:

The issue is whether the claimant is still employed in the same capacity as in the original contract of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant began employment as a part-time, on-call certified nursing assistant float person for Care Initiatives on February 18, 2008. The claimant continues to be employed at the time of hearing. The claimant was hired to work on a part-time basis and was not guaranteed any minimum number of hours by her employer. Due to medical reasons and the claimant's educational pursuits, Ms. Stieneke changed her working hours, resulting in fewer hours being available to her with Care Initiatives.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant is employed part-time in the same capacity as in the original contract of hire. The claimant was hired part-time with no minimum hours of work guaranteed. The claimant reduced the working hours that she could accept due to her personal obligations and educational pursuits.

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.

For the reasons stated herein, the administrative law judge concludes the claimant is not eligible to receive partial unemployment insurance benefits based upon her employment with Care Initiatives.

DECISION:

The representative's decision dated June 24, 2009, reference 05, is affirmed. The claimant is still employed in the same capacity as in the original contract of hire. Benefits are denied as of May 21, 2009.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw