

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRILL R WESTSWIM
Claimant

APPEAL NO. 13A-UI-03664-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 09/16/12
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:

The claimant filed a timely appeal from a representative's decision dated March 22, 2013, reference 02, which denied unemployment insurance benefits effective February 24, 2013, finding that the claimant was still employed at the same hours and wages as in the original agreement of hire and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on April 30, 2013. The claimant participated. The employer participated by Ms. Angie Hoover and Mr. Terry Best.

ISSUE:

The issue in this matter is whether the claimant is still employed part time at the same hours and wages as agreed to by the claimant.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: That the claimant began employment with Mercy Hospital on May 5, 1997. The claimant was hired to work at that time as a full-time pharmacy technician. On or about July 25, 2011, Ms. Westswim was temporarily laid off work. Approximately two weeks later in August 2011 Ms. Westswim was offered a recall to work offering a one-half time position at 20 hours per week as a supply clerk. Ms. Westswim accepted the half-time position with Mercy Hospital at that time. Ms. Westswim continues to be employed at the time of hearing and is paid at the same rate of pay per hour or a greater amount than when hired.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Westswim is still employed in a part-time job at the same hours and wages as contemplated at the time that the claimant accepted the position offered by her employment. It does.

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.

The evidence in the record clearly establishes that Ms. Westswim accepted a half-time position with Mercy Hospital offering 20 hours of work per week in August 2011. The claimant continues to be employed in a half-time position working 20 hours and is paid at the same or greater amount than at the time that she was hired.

The administrative law judge concludes the claimant cannot be considered to be partially unemployed as she is still employed part time at the same hours and wages as contemplated when she accepted a half-time employment with Mercy Hospital in August 2011. As there was no guarantee that the claimant would receive working hours in excess of 20 hours per week, there has been no change in the agreement of hire. The working hours available to the claimant and the pay offered by the employer are no different than agreed upon by the parties in August 2011. The claimant is not eligible to receive partial unemployment insurance benefits.

DECISION:

The representative's decision dated March 22, 2013, reference 02, is affirmed. The claimant is not partially unemployed within the meaning of the law as she is still employed by Mercy Hospital in a part-time job under the same terms and conditions as when she accepted that job position.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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