

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA J GOFF

Claimant

APPEAL NO: 11A-UI-06342-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLLY KRYSTEK DDS PC

Employer

OC: 03/20/11

Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 2, 2011 determination (reference 01) that held the claimant eligible to receive benefits as of March 20, 2011, because the employer reduced the hours she worked. This hearing was consolidated with three other appeals that addressed other issues. Each issue will be addressed in separate decisions, but some facts in one decision may be repeated in another decision.

The claimant participated in the hearing with her attorney, Steven Greenleaf. Doug Olson, attorney at law, represented the employer. Holly Krystek, DDS, and Lori Decker, the office manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Three and Claimant Exhibits A through E were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive partial benefits as of March 20, 2011.

ISSUE:

Is the claimant eligible to receive partial unemployment insurance benefits as of March 20, 2011?

FINDINGS OF FACT:

The claimant started working for the employer in March 2002. The employer initially hired her to work as a part-time hygienist to work three days a week. (Claimant Exhibit A.) Sometime before 2011, the claimant agreed to work two days a week, Monday and Wednesday.

From January 2011 through March 2, the claimant missed work as indicated below:

January 5 – hurt finger	January 17 – nephew born
January 19 – dad's surgery	January 26 – 1.5 hours missed –took Lex to doctor
February 2 – snowed in	February 7 – daughter ill
February 9 – daughter ill	February 16 – state wrestling
February 28 – cruise	March 2 – cruise

(Employer Exhibit One.)

After reviewing the claimant's absences, Krystek decided the claimant was no longer reliable and decided to reduce her hours of work to one day a week. The employer had a meeting with the claimant on March 21. During this meeting, the employer told the claimant her hours were reduced to one day a week. Even though the claimant became upset when the employer reduced her hours, the employer repeated she had made a decision to have her only work one day a week. The employer also reminded the claimant she had until May 1 to take a local anesthesia course. The claimant did not make a decision on March 21 about working just one day a week. (Claimant Exhibit A.)

On March 22, the claimant sent the employer an email indicating she had decided she would continue her employment and accepted the one day a week job with the stipulation she would complete the local anesthesia course. Later on March 22, the claimant sent Decker an email indicating she had signed up and registered for the local anesthesia course. (Employer Exhibit Two.).

The claimant established a claim for benefits during the week of March 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hours and wages as hired and is not working a reduced workweek, the claimant cannot be considered unemployed and is not eligible to receive partial unemployment insurance benefits. 871 IAC 24.23(26). The employer established business reasons for reducing the claimant's hours. After the claimant was absent 10 scheduled days from January 5 through March 2, 2011, the employer concluded she was not reliable and reduced the hours she worked by 50 percent. The claimant is eligible to receive partial unemployment insurance benefits as of March 20, 2011, because the employer reduced her hours which resulted in the claimant becoming partially unemployed.

DECISION:

The representative's June 2, 2011 determination (reference 01) is affirmed. The claimant is eligible to receive partial benefits as of March 20, 2011, because the employer reduced her hours of work which resulted in the claimant becoming partially unemployed. Since the employer made the decision to reduce her hours, the employer's account is subject to charge as of March 20, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs