

FINDINGS OF FACT:

The claimant started working for the employer on or about May 8, 2000. Until June 18, 2005, she worked full time as a restorative aide in the employer's long-term care nursing facility on a 7:00 a.m.-to-3:00 p.m., Monday through Friday schedule. She continues to work at the facility part-time (20 hours per week) as a restorative aide/certified nursing aide (CNA).

The claimant began a FMLA (Family Medical Leave) for maternity as of June 18; her leave ended as of August 2, 2005 with no work restrictions. About two weeks prior to her return to work, the employer informed her that it was modifying the position so that she would split her time between being a restorative aide and a CNA, and the schedule as a CNA would be from 6:00 a.m. to 2:00 p.m., with rotating weekends. The claimant worked her prior schedule until about August 14, 2005; but then had to decide whether she could work on the altered schedule. She informed the employer at that time that her babysitter could not accommodate the 6:00 a.m. start time, so the claimant's schedule was shifted to part-time. On or about September 6, the claimant informed the employer that she had found a sitter who could accommodate the 6:00 a.m. start time, but the employer advised her that it was too late to restore her to the full time position.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code section 96.19-38-b.

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.

Beginning on or about August 14, 2005, the employer was not providing the claimant with substantially the same employment as it provided during her base period, through no fault of her own. Consequently, the claimant is qualified to receive partial unemployment insurance benefits effective that date, provided she is otherwise eligible. For weekly eligibility, the claimant would need to file weekly claims reflecting her wages earned for that week so that a determination can be made for each week as to the amount of her eligibility for that week.

DECISION:

The unemployment insurance decision dated September 13, 2005 (reference 02) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits beginning August 14, 2005.

ld/kjw