

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANE M BURKE**

Claimant

**APPEAL NO: 09A-UI-06748-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEW HAMPTON CARE CENTER INC**

Employer

**OC: 09/14/08**

**Claimant: Appellant (2)**

Section 96.4-3 – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Diane M. Burke (claimant) appealed a representative's April 24, 2009 decision (reference 03) that concluded she was not eligible to receive benefits as of March 22, 2009, because she was working the same number of hours that New Hampton Care Center, Inc. (employer) hired her to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing. Patrick Ogden, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Should the claimant be eligible to receive partial unemployment insurance benefits, or is she ineligible to receive benefits because she accepted a part-time job with the employer?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of September 14, 2008. Before the claimant became unemployed, she was working full time. In mid-February 2009, the employer hired the claimant to work part-time, three days a week. The claimant began working on February 16, 2009.

The claimant did not feel well and went to her doctor on February 18 and 20. The claimant's doctor restricted her from working February 20 through March 8, 2009. The claimant returned to work as scheduled on March 9. She filled in for another employee on March 10, 2009. The claimant again felt ill and learned she had the flu. The claimant's physician restricted her from working March 11 through 22, 2009. The claimant returned to work on March 23 and has continued to work part-time for the employer.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. The representative relied on 871 IAC 24.23(26) to determine the

claimant's availability. The regulation states a claimant cannot be considered partially unemployed when a claimant is still employed in a part-time job at the same hours and wages as contemplated when hired and is not working a reduced workweek. This regulation does not apply to the claimant's situation. Instead, this regulation applies when a claimant has been working a part-time job, still works at the part-time job and establishes a claim for benefits. If the claimant is not working a reduced workweek when she establishes a claim for benefits, she cannot be considered partially unemployed. In this case, the claimant had been working full-time and began working part-time for the employer after she established her claim for benefits. To deny the claimant benefits for obtaining a part-time job would discourage claimants from attempting to find part-time employment and filing for partial instead of receiving her maximum weekly benefit amount.

Since the claimant only works part-time and continues to look for full-time employment, she has not restricted her availability for work. As of March 22, 2009, the claimant is eligible to receive partial unemployment insurance benefits, provided she meets all other eligibility requirements.

**DECISION:**

The representative's April 24, 2009 decision (reference 03) is reversed. Since the claimant secured her part-time employment after she established her claim for benefits, this part-time employment does not make her ineligible to receive benefits. Instead, the claimant is eligible to receive partial benefits as of March 22, 2009.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs