

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY L DUNNE**  
Claimant

**APPEAL NO: 19A-UI-04664-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ULTIMATE NURSING SERVICES OF IOWA**  
Employer

**OC: 01/27/19**  
**Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available for Work  
IAC R 871-24.23(26) – Still employed at same hours and wages

**STATEMENT OF THE CASE:**

Cindy L. Dunne, the claimant filed a timely appeal from a representative's unemployment insurance decision dated June 3, 2019, (reference 04) which denied unemployment insurance benefits as of May 12, 2019 finding that the claimant was still employed in her job at the same hours and wages as in the original contract of hire, concluding that the claimant therefore could not be partially unemployed within the meaning of the law. After due notice was provided, a telephone hearing was held on July 3, 2019. Claimant participated. Employer participated by Ms. Kelsey Breeze, Human Resource Manager. Claimant's Exhibit 1 was admitted into the hearing record.

**ISSUES:**

The issues are whether the claimant was still employed at the same hours and wages as agreed upon at the time of hire and whether the claimant is able and available for work within the meaning of the Iowa Employment Security law.

**FINDINGS OF FACT:**

Having considered the testimony of the witnesses and all of the evidence in the record, the administrative law judge finds: Cindy L. Dunne began employment with Ultimate Nursing Services of Iowa on August 30, 2018. Ms. Dunne was hired to work part-time by working 30-35 hours per week and was paid by the hour. Ultimate Nursing Services of Iowa, is a company that provides home health care workers to various clients at various client locations.

Shortly before the end of December, 2018, Ms. Dunne had been assigned to work at a client's home location, but Ms. Dunne had been removed from the assignment by client request. The employer at that time did not consider Ms. Dunne at fault and was willing to reassign her to other clients.

On January 4, 2019, Ms. Dunne was contacted by Amber Richter, a nurse manager, she informed the claimant of two potential new assignments that might be forth coming and told Ms. Dunne that each would offer full-time work. Ms. Dunne agreed to accept either assignment

if one materialized. During the conversation, Ms. Richter also stated to Ms. Dunne that if Ultimate Nursing Services of Iowa did not offer her at least one assignment per month, and she did not accept at least one assignment per month, the company would change her status from a part-time worker to that of a "PRN/as needed worker" and that her services would only be used when the company had need for them, so there would be no guarantee minimum working hours each week. Ms. Dunne readily agreed to accept either of the full-time positions and remained willing to accept any other assignment the company offered. Subsequently Ms. Dunne then began to actively and earnestly seek other part-time work with another company. Ms. Dunne sought and accepted the employment with another company after tendering her resignation from Ultimate Nursing Services of Iowa. Ms. Dunne resigned on June 14, 2019, because the number of regularly available working hours had been reduced by the company after the January 4, 2019 conversation with Ms. Richter.

It is the employer's position that the company reserves the right to change employee's status from part-time to PRN/as needed at the discretion of the company, based upon the needs of the company and its clients.

Ms. Dunne has actively and earnestly attempted to secure additional part-time assignments with this and other employers after being changed to a PRN status on January 4, 2019.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that Ms. Dunne was still employed in a part-time job with the same hours and wages as contemplated in the original agreement of hire. It does not.

Iowa Admin. Code r. 871-24.23(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 establishes that Ms. Dunne was hired as a part-time LPN home health provider working 30-35 hours per week at client locations.

Ms. Dunne continued to be employed by Ultimate Nursing Services of Iowa working 30-35+ part-time hours per week or more until on or about December 28, 2018, when a client requested that Ms. Dunne be removed from the assignment because of an issue over a dog bite and client's concern about Ms. Dunn's influence on adolescent learning. At that time, Ultimate Nursing Services of Iowa did not attribute any blame to Ms. Dunne and continued to assign Ms. Dunne to other client locations.

On January 4, 2019 the claimant was contacted by Amber Richter, a company nurse manager. Ms. Richter informed the claimant of the potential for two full-time assignments that might take place, each offering the claimant the same or more working hours and Ms. Dunne expressed her willingness to accept either assignment if it materialized. In conjunction with that conversation however, Ms. Richter also informed the claimant that the company would in effect,

unilaterally be placing her in a PRN (as needed) status if the company could not offer her at least one assignment per month and the claimant did not accept at least one.

Ms. Dunne was agreeable to accepting either of the full-time positions referenced by Ms. Richter as each would offer the same or more working hours and pay as she agreed to when hired. Neither of the two full-time assignments referenced by Ms. Richter in her conversation with the claimant materialized.

Since the original agreement of hire was unilaterally changed by the employer on January 4, 2019, Ms. Dunne was no longer employed as a part-time employee working with a guarantee of a minimum of 30-35 hours of work per week, Ms. Dunne has worked only as a PRN/as needed worker with no guarantee of a minimum number of working hours each week, and was not employed at the same hours and pay as agreed upon at hire.

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For the above stated reasons, the administrative law judge concludes that the claimant was no longer still employed as a part-time worker at the same hours and wages as contemplated in the original agreement of hire as of January 4, 2019. After that date, there was no guarantee of the minimum hours of work the claimant would be assigned each week and because she was an "as needed" worker and the claimant's work hours were reduced because of the change in the agreement of hire.

Based upon the evidence in the record, the administrative law judge concludes that the claimant has been partially unemployed during the weeks between January 4, 2019 and June 1, 2019 when she resigned her position and is eligible to receive partial unemployment insurance benefits for those weeks, provided that she meets all other eligibility requirements of Iowa law. The employer's account is subject to charge.

The evidence in the record establishes that Cindy L. Dunne is able and available for work and is actively and earnestly seeks additional assignments through Ultimate Nursing Services of Iowa as well as other firms after being changed to an as needed worker unilaterally by the employer on January 4, 2019.

The issue of the claimant's job separation, unless otherwise adjudicated, is remanded back to Iowa Workforce Benefits Section for an investigation and determination.

**DECISION:**

The representative's unemployment insurance decision dated June 3, 2019, reference 04 is reversed. Claimant is considered to be partially unemployed since January 4, 2019 when the claimant no longer continued to be employed part-time at the same hours and wages as contemplated in the original agreement of hire. The employer's account is chargeable for benefits.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn